(15,242.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1895.

No. 207.

AUGUSTUS R. S. FOOTE AND JOHN S. FOOTE,
PLAINTIFFS IN ERROR,

vs.

THE WOMEN'S BOARD OF MISSIONS ET AL.

IN ERROR TO THE SUPERIOR COURT OF THE COUNTY OF NEW HAVEN, STATE OF CONNECTICUT.

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1 UNITED STATES OF AMERICA, *ss*:

[Seal of Circuit Court, Connecticut.]

The President of the United States of America to the honorable the judges of the superior court in and for New Haven county, in the State of Connecticut, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said superior court in and for New Haven county, in the State of Connecticut, before you or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between Augustus R. S. Foote and John S. Foote and the Women's Board of Missions, Mandena M. Weed, Elliott H. Morse, executor of the will of Edward H. Leffingwell; Sarah B. Leffingwell, Douglass Leffingwell, Henry Leffingwell, Christopher Leffingwell, James Leffingwell, Caroline Leffingwell, William Leffingwell, Frances Leffingwell, William A. Leffingwell, William Leffingwell, Emma F. Leffingwell, Caroline A. Leffingwell, and Oliver S. White, administrator *de bonis non* of the estate of William Leffingwell, wherein was drawn in question the validity of a treaty or statute of or an authority exercised under the United States and the decision was against their validity, or wherein was drawn in question the validity of a statute of or an authority exercised under said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity, or wherein was drawn in question the construction of a clause of the Constitution or of a treaty or statute of or commission held under the United States and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission, a manifest error hath happened, to the great damage of the said Augustus R. S. Foote and John H. Foote, as by their complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the third Monday of January next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the

said Supreme Court, the 23d day of December, in the year of our Lord one thousand eight hundred and ninety-two.

E. E. MARVIN,
Clerk of the Circuit Court of the United States for the District of Connecticut.

Allowed by—

JOHN M. THAYER,
Presiding Judge of the Superior Court in and for New Haven County, at the September Term, 1892.

[Endorsed:] Algernon R. S. Foote's and John H. Foote's appeal from probate. Writ of error to the superior court, New Haven county, State of Connecticut.

2 UNITED STATES OF AMERICA, *ss:*

To the Women's Board of Missions, Mandena M. Weed, Elliott H. Morse, executor of the will of Edward H. Leffingwell; Sarah B. Leffingwell, Douglass Leffingwell, Henry Leffingwell, Christopher Leffingwell, James Leffingwell, Caroline Leffingwell, William Leffingwell, Frances Leffingwell, William A. Leffingwell, William Leffingwell, Emma F. Leffingwell, Caroline A. Leffingwell, and Oliver S. White, administrator *de bonis non* of the estate of William Leffingwell, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the third Monday of January, 1893, pursuant to a writ of error filed in the clerk's office of the superior court in and for New Haven county, in the State of Connecticut, wherein Augustus R. S. Foote and John S. Foote are plaintiffs and you are defendants in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the said Supreme Court of the United States, this 23d day of December, in the year of our Lord one thousand eight hundred and ninety-two.

JOHN M. THAYER,
Presiding Judge of the Superior Court in and for New Haven County, State of Connecticut, September Term, 1892.

Service of the foregoing citation is hereby accepted and further service of the same waived.

New Haven, Connecticut, December 27th, 1892.

MANDENA M. WEED.
ELLIOTT H. MORSE,
Executor of Will of Edward H. Leffingwell.
WOMEN'S BOARD OF MISSIONS,
By ALLING, WEBB & MOREHOUSE, *Attorneys.*
OLIVER S. WHITE,
Administrator de bonis non of the Estate of William Leffingwell.
SARAH B. LEFFINGWELL,
DOUGLASS LEFFINGWELL,
HENRY LEFFINGWELL,
CHRISTOPHER LEFFINGWELL,
JAMES LEFFINGWELL,
CAROLINE LEFFINGWELL,
WILLIAM LEFFINGWELL,
FRANCES LEFFINGWELL,
LOUIS H. BRISTOL,
Executor of William A. Leffingwell;
WILLIAM LEFFINGWELL,
EMMA F. LEFFINGWELL, AND
CAROLINE A. LEFFINGWELL,
By BRISTOL, STODDARD & BRISTOL, *Att'ys.*

[Endorsed:] Augustus R. S. Foote and John H. Foote, plaintiffs in error, *vs.* The Women's Board of Missions and others, defendants in error. Citation.

3 Know all men by these presents that we, Augustus R. S. Foote, of Washington, in the District of Columbia, and John S. Foote, of Cleveland, Ohio, acting herein by Simeon E. Baldwin, their attorney, as principals, and Simeon E. Baldwin, of New Haven, Connecticut, as surety, are held and firmly bound unto the Women's Board of Missions, Mandena M. Weed, Elliott H. Morse, executor of the will of Edward H. Leffingwell; Sarah B. Leffingwell, Douglass Leffingwell, Henry Leffingwell, Christopher Leffingwell, James Leffingwell, Caroline Leffingwell, William Leffingwell, Frances Leffingwell, William A. Leffingwell, William Leffingwell, Emma F. Leffingwell, Caroline A. Leffingwell, and Oliver S. White, administrator *de bonis non* of the estate of William Leffingwell, in the sum of two hundred and fifty (250) dollars, lawful money of the United States, to be paid to the said obligees or either of them or their or either of their certain executors, administrators, or assigns; for the payment of which, well and truly to be made, we bind ourselves and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated the 23d day of December, in the year of our Lord one thousand eight hundred and ninety-two.

The condition of this bond is such that whereas the above-named

Augustus R. S. Foote and John H. Foote, plaintiffs in error, have sued out their writ of error from the Supreme Court of the United States to the superior court in and for New Haven county, in the State of Connecticut, wherein the obligees are defendants in error:

Now, therefore, if the said Augustus R. S. Foote and John S. Foote shall prosecute their said writ to effect and answer all damages and costs if they fail to make their plea good, then this bond shall be void; otherwise good.

AUGUSTUS R. S. FOOTE,
By SIMEON E. BALDWIN, *Attorney.* [SEAL.]
JOHN S. FOOTE,
By SIMEON E. BALDWIN, *Attorney.* [SEAL.]
SIMEON E. BALDWIN. [SEAL.]

The foregoing bond is approved December 23d, 1892.

JOHN M. THAYER,
Presiding Judge of the Superior Court in and for New Haven County, State of Connecticut, September Term, 1892.

[Endorsed:] Augustus R. S. Foote and John H. Foote, plaintiffs in error, *vs.* The Women's Board of Missions and others, defendants in error. Bond on writ of error.

4 *Reservation.*

Supreme Court of Errors, New Haven County.

Third judicial district, first Tuesday in June, 1892.

Superior court, New Haven county, 1st Tuesday in April, 1892.

AUGUSTUS R. S. FOOTE *et al.*

Appeal from probate.

DISTRICT OF NEW HAVEN, *ss:*

Probate court, March 9th, 1892.

Estate of WILLIAM LEFFINGWELL, Late of New Haven, in said District, Deceased.

Upon the settlement of the administration account of said estate there remains for distribution in the hands of the administrator the sum of 74,864.46 dollars in residuary personal estate; and there being the following residuary legatees under the will of said deceased, or their representatives, namely, the children of William Leffingwell, a son of said deceased, Caroline Street, a daughter of said deceased, Maria Williams, a daughter of said deceased, the children of Lucius Leffingwell, a son of said deceased, and Wm. A. Beckley, trustee under said will for Edward H. Leffingwell, a son of said deceased, said Beckley being the successor to Henry White, who was the last survivor of Roger S. Baldwin, Samuel J. Hitch-

cock and Henry White, trustees, under said will for said Edward H. Leffingwell; therefore,

Ordered, that the estate be distributed by said administrator among the said residuary legatees, according to law and said will, as follows: One-fifth thereof to the children of William Leffingwell, a son of said deceased, or their executors or administrators; one-fifth thereof to the executors or administrators of Caroline Street, a daughter of said deceased; one-fifth thereof to the executors or administrators of Maria Williams, a daughter of said deceased; one-fifth thereof to the children of Lucius Leffingwell, a son of said deceased, or their executors or administrators; one-fifth thereof to said Wm. A. Beckley, trustee under said will for Edward H. Leffingwell, and return make to this court.

By order of court:

TIMOTHY F. CALLAHAN, *Clerk.*

Motion for an Appeal.

In the Matter of the Accounting of OLIVER S. WHITE, Administrator *de bonis non* of the Estate of William Leffingwell, Deceased.

To the court of probate for the district of New Haven:

Augustus R. S. Foote and John S. Foote respectfully represent that they are grandchildren and the sole living descendants of Caroline Street, a daughter of said William Leffingwell, and that they were on March 3, 1891, and now are, among the next of kin of said William Leffingwell, and that they are aggrieved by the decree of the court in the above-entitled matter, passed March 9th, 1892, ordering the distribution of the balance found due from said Oliver S. White, administrator, on said accounting, as part of the residuary estate of said William Leffingwell.

And, for reasons of appeal, they say that:

1. Said funds received by said Oliver S. White, administrator, were received by him as representing the next of kin of said William Leffingwell, and were not received by him as assets of the estate of said William Leffingwell.

2. Said balance of said funds belongs of right to these appellants and the other next of kin of said William Leffingwell, to be shared among them *per stirpes*.

3. Said funds which formed the subject of said accounting were received by said Oliver S. White, administrator, from the administrator *de bonis non* of the estate of Hezekiah B. Pierrepont, deceased, the last surviving partner of the firm of Leffingwell & Pierrepont, of which firm said William Leffingwell was the other partner, as half of the net sum received by said administrator under a certain appropriation made by the Congress of the United States, on March 3, 1891, "to pay the findings of the Court of Claims on a claim for indemnity for spoliations by the French prior to July thirty-first, eighteen hundred and one, under the act entitled 'An act to pro-

6 vide for the ascertainment of claims of American citizens for spoliations committed by the French prior to the thirty-first day of July, eighteen hundred and one'" (26 U. S. Stat. at Large, p. 897) to wit, out of an appropriation made to pay such a claim for such spoliation on the ship Confederacy (*ibid.*, p. 903) owned by said firm; and said appropriation was one of many made in said act to sundry claimants, on account of similar spoliations, and the Rhode Island Trust Company (*ibid.*, p. 902) and other corporations were among said claimants, and the act making all said appropriations contained the proviso that (*ibid.*, p. 908) "the awards in the cases of individual claimants shall not be paid until the Court of Claims shall certify to the Secretary of the Treasury that the personal representatives on whose behalf the award is made represents the next of kin;" and such a certificate was made by said court to the Secretary of the Treasury as respects said award for the spoliations on the ship Confederacy.

4. These appellants are entitled as of the next of kin of William Leffingwell, on March 3, 1891, when said act was passed, to their due share *per stirpes* of said balance of said account, to wit, one-third thereof, there being only three of the five children of the testator who survived him, whose descendants were living on March 3, 1891.

5. The trustee under the will of William Leffingwell has no right to receive any of said fund.

6. No administrator of the estate of Mrs. Caroline Street has a right to receive any of said fund.

7. Said Oliver S. White is a special administrator, appointed under the provisions of the act of 1886 (Gen. Stat., sec. 567), and said balance should have been ordered paid by him to said next of kin of William Leffingwell, *per stirpes*.

8. By virtue of said act of Congress approved March 3, 1891, making said appropriations, the undersigned, as next of kin of William Leffingwell, have a right to part, to wit, one-third of said balance in the hands of said Oliver S. White, administrator, and said decree ought to have ordered distribution of the same to them.

The undersigned therefore move for an appeal from said order of March 9, 1892, to the superior court for New Haven county, to be held at New Haven on the first Tuesday of April, 1892.

Dated at New Haven, March 10th, 1892.

AUGUSTUS R. S. FOOTE,
JOHN S. FOOTE,
By SIMEON E. BALDWIN,
Their Attorney.

7 At a court of probate for the district of New Haven, holden at New Haven, in and for the district of New Haven, on the 29th day of March, 1892.

Present: A. Heaton Robertson, Esquire, judge.

Estate of WILLIAM LEFFINGWELL, Late of said New Haven, Deceased.

Order on Appeal of Augustus R. S. Foote and John S. Foote.

Upon the motion of Augustus R. S. Foote and John S. Foote, great-grandchildren of said William Leffingwell, for an appeal from the order of distribution made by this court on March 9th, 1892, it is—

Ordered, that said appeal be allowed, and said appellants, as principal-, and Simeon E. Baldwin, of New Haven, as surety, having given bond to the State in the sum of one hundred and forty dollars, conditioned to prosecute said appeal to effect, and to answer all costs in case they fail to do so, said bond is accepted; and it is ordered that notice of said appeal be given by some proper officer or indifferent person to Oliver S. White, of New Haven, administrator *de bonis non* with the will annexed, of the estate of William Leffingwell, deceased, and to the several parties other than said appellants named in the order of notice issued by this court on January 15th, 1892, on the application of said administrator, or to their respective attorneys of record who have appeared for them in this court, by leaving with each of them or their said attorneys a true and attested copy of this order, on or before March 31st, 1891.

By the court:

TIMOTHY F. CALLAHAN, *Clerk.*

We hereby accept service of foregoing order of notice, and consent that this appeal may be entered upon the docket of said superior court on the first Tuesday of April, 1892, without the twelve days' notice required by the statute.

Dated at New Haven, March 30th, 1891.

ALLING, WEBB & MOREHOUSE,
Attorneys for the Women's Board of Missions and Madena M. Weed and Elliott H. Morse, Executor.
BRISTOL, STODDARD & BRISTOL,
Attorneys for William A. Leffingwell and Others.
OLIVER S. WHITE,
Administrator de bonis non of the Estate of Wm. Leffingwell.

8 STATE OF CONNECTICUT, } *ss:*
County of New Haven, }

I, Timothy F. Callahan, clerk of the court of probate within and for the district of New Haven, in said county of New Haven, and keeper of the records and seal thereof, hereby certify that I have examined the within and foregoing copy of the record of the order of distribution of the residuary estate of William Leffingwell, late of New Haven, in said district, deceased, and the motion of Augustus R. S. Foote and John S. Foote for an appeal from said order, and the decree of this court allowing the same, and the order of notice on said appeal, and have compared all of the foregoing with the original record thereof now remaining in this office, and have

found the same to be a correct transcript therefrom, and of the whole of said original record.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, on this 30th day of March, A. D. 1892.

[L. S.] TIMOTHY F. CALLAHAN, *Clerk.*

STATE OF CONNECTICUT, } *ss:*
County of New Haven, }

I, A. Heaton Robertson, sole and presiding judge of the court of probate within and for the district of New Haven, in said county of New Haven, hereby certify that Timothy F. Callahan, whose name is above written and subscribed, is, and was at the date thereof clerk of the court of probate within and for the district of New Haven, in said New Haven county, and keeper of the records and seal thereof, duly commissioned and sworn; that I am well acquainted with his signature, and know the above to be his, and that the above certificate by him made is in due form to authenticate the records, files and proceedings of said court.

In testimony whereof I have hereunto set my hand, this 30th day of March, A. D. 1892.

A. HEATON ROBERTSON, *Judge.*

9 STATE OF CONNECTICUT, } *ss:*
County of New Haven, }

I, Timothy F. Callahan, clerk of the court of probate, within and for the district of New Haven, in said county of New Haven, hereby certify that A. Heaton Robertson, whose name is within written and subscribed, is, and was at the date thereof, sole and presiding judge of the court of probate within and for the district of New Haven, in said New Haven county, duly commissioned and sworn; that I am well acquainted with his signature, and know the above to be his.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, on this 30th day of March, A. D. 1892.

[L. S.] TIMOTHY F. CALLAHAN, *Clerk.*

Superior Court, New Haven County, May 24th, 1892.

Augustus R. S. Foote's appeal from probate.

Answer to Reasons of Appeal.

1. Paragraphs 1, 2, 4, 5, 6, 7 and 8, are denied, both as to the averments of fact and law therein made.

2. With reference to paragraph 3, said funds were received by said White, as administrator *de bonis non*, with the will annexed, of William Leffingwell, from the administrators *de bonis non*, with the will annexed, of Hezekiah B. Pierrepont.

The whole proviso to the appropriation act is not stated in said paragraph, and no such certificate was made by the Court of Claims

to the Secretary of the Treasury, as stated in said paragraph 3; but otherwise the averments of said paragraph are admitted.

By ALLING, WEBB & MOREHOUSE, *Attorneys.*

10 Superior Court, New Haven County, the 23d Day of May, A. D. 1892.

AUGUSTUS R. S. FOOTE *et al.*

Appeal from probate.

Reservation.

By request of all the parties to this case the court reserves this case and the questions of law arising thereon for the consideration and advice of the supreme court of errors next to be holden at New Haven in and for the third judicial district, on the 1st Tuesday in June, A. D. 1892.

J. M. HALL, *Judge.*

A true copy of record.
Attest: EDWARD A. ANKETELL, *Clerk.*

Certified by—
EDWARD A. ANKETELL,
Clerk of the Supreme Court of Errors.

11 Superior Court, New Haven County, May 21st, 1892,

AUGUSTUS R. S. FOOTE *et al.*

Appeal from probate.

SARAH B. LEFFINGWELL *et al.*

Appeal from probate.

WILLIAM A. LEFFINGWELL *et al.*

Appeal from probate.

ELLIOTT H. MORSE.

Executor's appeal from probate.

Finding.

The following finding of facts is made as a finding in and for each of the above-entitled causes.

It is found by the court that William Leffingwell, late of New Haven, died in 1834, leaving a will, a copy of which is annexed hereto, and marked Exhibit 1.

He had been a member of the firm of Leffingwell & Pierrepont, composed of himself and Hezekiah B. Pierrepont, each having equal shares in the partnership.

The firm owned the ship "Confederacy," and its cargo. Said ship was taken by the French prior to 1800, and French spoliation

claim, predicated upon this, was put in before the Court of Claims, under an act of Congress, approved in 1885, by Henry E. Pierrepont, executor of the will of Hezekiah B. Pierrepont, who was the surviving partner of said firm.

A copy of the petition, finding, and other proceedings in said Court of Claims, together with a copy of the entries upon the docket of the Court of Claims, is here*by* annexed, and marked Exhibit 2.

The executors of the will of William Leffingwell had all died before 1885. Oliver S. White was appointed in 1887, pursuant to Gen. Stat., sec. 567, administrator *de bonis non* of the estate of William Leffingwell, with the will annexed, by the court of probate for the district of New Haven, in which district said William
12 Leffingwell died, and a copy of the decree of said court, making said appointment, is annexed hereto, and marked Exhibit 3.

Congress made an appropriation to pay the Leffingwell & Pierrepont claim, by act approved March 3d, 1891.

With reference to the construction of the proviso, which is annexed to the appropriation act, the appellees in the first three entitled causes refer to the printed "Bill to provide for the payment of the French spoliation claims, in accordance with the findings of the Court of Claims" as first introduced in the Senate of the United States, and referred to the Committee on Claims, and to the printed bill as amended, which was reported to the Senate from the Committee on Claims, together with the printed report of such committee, and which bill, as amended, was referred to the Committee on Appropriations; and also, to the printed copy of the deficiency bill, which incorporated the appropriations to pay the French spoliation claims; and also, to the printed finding of the Court of Claims in the various cases referred to in said appropriation bill.

The first and second documents so referred to, marked S. 4819, H. R. 13658, and contained in book, Exhibit 4, may be printed in the record of the case as reserved for the advice of the supreme court of errors. The remaining documents, being voluminous in their character, and also being bound in suitable binding, and marked Exhibits 4 and 5, may be delivered to the Supreme Court, and all of said documents may be referred to on the argument of this case in the supreme court of errors, provided they are admissible, for the purpose of aiding in the construction of the proviso to said appropriation act, all the appellants in the first three entitled causes objecting thereto which objection is reserved with the other questions.

A copy of the certificate of the Court of Claims to the Secretary of the Treasury, in said case, together with a copy of the doings of the Treasury Department, upon said claim, are hereto annexed, and marked Exhibit 6.

Oliver S. White, as such administrator, collected the funds in question from the administrators *de bonis non*, with the will annexed, of the estate of Hezekiah B. Pierrepont (said Henry E. Pierrepont, executor, having died during the course of the proceedings), it being

one-half of the net balance in the hands of such administrator, collected out of said appropriation.

Said Hezekiah B. Pierrepont was a resident of Kings county in the State of New York at the time of his decease. A copy
13 of the doings of the court of surrogate of Kings county, concerning the settlement of the account of such administrator of the estate of Hezekiah B. Pierrepont, concerning this fund, is hereto annexed, and marked Exhibit 7. On receiving said one-half of such net balance said Oliver S. White gave to said administrators on the estate of Hezekiah B. Pierrepont, a writing, a copy of which is annexed hereto, and marked Exhibit 8.

William Leffingwell left, as his next of kin, him surviving, the four children named in his will, Mrs. Caroline M. Street, Mrs. Maria S. Williams, Lucius W. Leffingwell, Edward H. Leffingwell, and the following children of his deceased son, William C. Leffingwell, to wit:

Frederick O. Leffingwell, Josephine Leffingwell, Adolphus H. Leffingwell, William A. Leffingwell, and Mary M. Leffingwell.

Edward H. Leffingwell died a resident of the probate district of New Haven, in 1888, and Elliott H. Morse, of New Haven, is executor of his will, which has been duly proved in the probate district of New Haven. Mrs. Caroline M. Street survived her husband, and died at New Haven, on the — day of ——, 1878, leaving a will, duly proved and approved, the executor named in which is dead, and an application is now pending in the probate court of the district of New Haven for an administrator *de bonis non* with the will annexed, on her estate.

Mrs. Maria S. Williams also died testate.

The next of kin of William Leffingwell, living on March 3d, 1891, were (1) the appellants, Augustus R. S. Foote, and John S. Foote, grandchildren of Mrs. Caroline M. Street, (2) Sarah B. Leffingwell, Henry Leffingwell, Douglass Leffingwell, Christopher S. Leffingwell, James S. Leffingwell, Caroline S. Leffingwell, children of Lucius W. Leffingwell; William Leffingwell, a grandson of Lucius W. Leffingwell, and Frances Leffingwell, the widow of William Leffingwell, a deceased son of said Lucius W. Leffingwell, (3) William A. Leffingwell, a son of William C. Leffingwell, and William Leffingwell, Emma F. Leffingwell and Caroline A. Leffingwell, grandchildren of said William C. Leffingwell.

A copy of the will and codicils of Mrs. Street is hereto annexed, and marked Exhibit 10.

A copy of the will and codicils of Edward H. Leffingwell is hereto annexed, and marked Exhibit 11.

In the case of all the wills, to wit: those of William Leffingwell, Mrs. Street, and Edward H. Leffingwell, the fund in question
14 will become a part of the residue of the several estates, and if disposed of by the several wills will be governed by the residuary provisions in the respective wills, and none of the fund will be claimed by creditors.

The Ellen B. Nelson mentioned in the will of the said Edward

H. Leffingwell as his adopted daughter being an adult could not have been so adopted under the statutes.

Upon the death of Henry White, the survivor of the three trustees named in the will of William Leffingwell, the probate court for the district of New Haven appointed William A. Beckley trustee, and a copy of the order of the court in the matter is hereto annexed, and marked Exhibit 9.

In the settlement of the estate of William Leffingwell there was a residuary balance to be disposed of by the residuary clause of said will of about ten thousand dollars ($10,000), consisting of real and personal estate. The executors in their first administration account which dealt only with personal estate, returned the following disposition of the residuary personal property, which account was duly approved by the court of probate in 1837.

"1835, Sept. 10. To part of the rest and residue of the estate bequeathed to the children and grandchildren, viz:

Delivered and transferred to Augustus R. Street and wife:

3 shares of the Hampshire & Hampden Canal Co., appraised at	$30 00
15 shares of New Haven County bank, appraised at	330 00
1 share of New Haven Steamboat Co., appraised at	224 00
Sundry articles of furniture and movables, delivered to them at inventory price	1,208 29
	$1,812 29

To Mrs. Maria S. Williams:

3 shares of Hampshire & Hampden Canal Co., appraised at	$30 00
15 shares New Haven County bank	330 00
Sundry articles of furniture, etc., at inventory price	259 41
Cash paid her	1,192 88
	$1,812 29

15 To Augustus R. Street, and Lucius Leffingwell, guardian to the children of William C. Leffingwell, one-third:

3 shares of Hampshire & Hampden Canal Co., appraised at	$30 00
15 shares New Haven County bank, appraised at	330 00
Sundry articles of furniture, at inventory price	95 74
Cash paid them	1,356 55
	$1,812 29

1835, October 20th. Delivered and transferred to the trustees of Edward H. Leffingwell:

3 shares of Hampshire & Hampden Canal Co., appraised at	$30 00
15 shares New Haven County bank	330 00
Sundry articles of furniture, at inventory price	601 48
Cash paid them	850 81
	$1,812 29

1836, February 17th. Delivered, etc., to Lucius W. Leffingwell, as guardian to his children:

3 shares of Hampshire & Hampden Canal Co.	$30 00
15 shares New Haven County bank	330 00
Sundry articles of furniture, at inventory prices	400 02
Cash paid him	1,052 27
	$1,812 29"

On page 425 of the probate records is found recorded the following receipt of Edward H. Leffingwell, which was made and executed as therein stated:

" Received, New Haven, September 10th, A. D. 1835, of Roger S. Baldwin, Samuel J. Hitchcock, and Henry White, executors of *of* the last will and testament of William Leffingwell, deceased, the following articles of personal property, movable, stock, and cash, amounting in all to the sum of eighteen hundred and twelve and twenty-nine one-hundredths dollars ($1,812.29) on account of the one-fifth portion of the rest and residue of the personal estate of said William not specifically bequeathed by said William Leffingwell, in his said will, to the said Roger S. Baldwin, Samuel J. Hitchcock, and Henry White, in trust for me, *i. e.*:

16	3 shares of capital stock of the Hampshire and Hampden Canal Company, valued at $10 per share, amounting to	$30 00
	15 shares of the capital stock of New Haven County bank, of which $20 on each share has been paid in, valued at $22 per share, amounting to	330 00
	Sundry articles, movable property, that is, household furniture, books, and plate, as enumerated in the annexed list, marked "A," amounting, at inventory appraisement, to	601 48

Also the sum of eight hundred and fifty dollars ($850) in money; and I do hereby release and discharge the said Baldwin, Hitchcock and White from all claims and demands which I have or may have against them, or either of them, on account of the foregoing amount of eighteen hundred and twelve and twenty-four hundredths dollars ($1,812.24), so as aforesaid given to them, in trust for me.

Accepted the 25th of November, 1844.

E. K. FOSTER, *J.*"

The final administration account was settled Nov. 24, 1844, and E. K. Foster was then judge of the probate court.

The distributors of the residuary real estate in 1835 set one-fifth of the same to Samuel J. Hitchcock, Roger S. Baldwin, and Henry White, in trust for Edward H. Leffingwell, valued at $465.00; and they on June 7, 1836, quitclaimed all their right, title, and interest in the same to said Edward.

The appellant, Elliott H. Morse, in the fourth entitled cause, claims that the trust for Edward H. in the disposition of the residue, under the will of William Leffingwell, was a dry trust, and that in the order of distribution of this fund from the estate of William Leffingwell the interest of the said Edward H. Leffingwell therein, he being dead, and the trustees named in the will being dead, should have been distributed to the said Morse, as executor of the will of the said Edward H. Leffingwell, and not to the said Beckley, as trustee as aforesaid.

Two of the appellants, Augustus R. S. Foote and John S. Foote, in the first three entitled causes claim that the interest of the said Edward H. Leffingwell in the residue of the estate of William Leffingwell is not that of a *cestui que trust.* in a dry trust, but that such interest in said residue and therefore in the funds in
17 question, if they be a part of the estate of William Leffingwell, on the death of the said Edward, vested not in his executor but in the parties or their descendants who took the other property given in trust for the said Edward H. Leffingwell as stated in said will, said Edward having died without issue.

It is agreed by all the parties to the said causes that all the said causes, and all questions arising thereunder, be reserved for the advice of the supreme court of errors, and that the supreme court of errors shall decide all the questions arising upon the claims of the parties on each appeal, and that no objection shall be made that these questions are not properly before the court, all the parties in interest being represented in court.

J. M. HALL, *Judge.*

EXHIBIT 1.

I, William Leffingwell, of New Haven, Connecticut, declare this writing to be my last will and testament. My body I resign to the earth, and my soul, to God who gave it, in hopes of a blessed immortality through the atonement of Jesus Christ, the only savior of sinners.

I give and devise to the children of my late son, William C. Leffingwell, share and share alike, the use and improvement of five shares of Union Wharf stock, three shares of New Haven Bank stock, five shares of Middletown Bank stock, one share in the Bank of New York, three shares of United States Bank stock, eighteen shares of Globe Insurance Company sixteen shares Franklin Fire Insurance Company stock; also, the use and improvement of the lot of land next south of Henry Dennison, and of the land under Samuel J. Hitchcock's, late Seth P. Staples' office; and whenever they shall arrive, respectively, to the age of twenty-five years, I

give and devise said land and stocks to them and their heirs forever, share and share alike, as they shall respectively arrive to said age of twenty-five years. And if any of them should die before they arrive to said age of twenty-five years then the share of such deceased person is to descend to the children of such deceased, or to their heirs, or if they leave no children, to the surviving children of my said son William C., in the same manner as is hereinbefore directed.

To my daughter Caroline, wife of Augustus R. Street, I give & devise six shares of Union Wharf stock, four shares of New
18 Haven Bank stock, four shares in Middletown bank, ten shares, or my whole interest, in the Ocean Insurance Company one share in the Bridgeport bank, three shares in the Bank of New York, six shares in the Bank of the United States, sixteen shares in the Globe Insurance Company, sixteen shares in the Franklin Insurance Company, and the pew in the Center church, number ninety-one, in which I have usually sat. Also, the use and improvement of the house, lot of land and buildings thereon where I live. Also, the use and improvement of my large lot of land in Grand street, excepting the gardens attached to the houses thereon, with the privilege (if my executors agree thereto) to sell in building lots, not exceeding one-half in value, according to their judgment, any part of the same not exceeding fifty feet front in a lot. Also, to sell some building lots in Chapel street, north of my house, and adjoining land lately sold to Isaac Thompson, to the amount of one hundred feet, running southerly to within four feet of the ground occupied by Mrs. Grace Ingersoll, or a less depth, if thought proper. And if said lots in the new township on Grand street, or at the homestead, shall be sold, I direct that the proceeds be invested in United States Bank stock, or in some of the local banks in the city of New York. Also, I give and devise to the said Caroline the use and improvement of the lot of land facing the public square between the Ingersoll house and the brick house occupied by Alvan Wilcox, running south as far as the brick-house garden, which last-mentioned land may be sold on the same conditions as the foregoing, and the proceeds invested in the same manner. The said Caroline to have the interest of all the proceeds of such sales so invested as long as she lives, but the principal which the lands bring, as well as the house and the other buildings and lands above mentioned not sold, to descend to her children, their heirs and assigns, forever, share and share alike.

To my daughter, Maria S. Williams, I give and devise six shares of Union Wharf stock, three shares of New Haven bank, three shares of Middletown bank one share in the Bank of New York, four shares of United States Bank stock, sixteen shares in the Globe Insurance Company, sixteen shares in the Franklin Insurance Company, and all my pews in the Center church, excepting the one in the middle aisle numbered ninety-one.

Also, I give and devise to said Maria my two brick houses in Leffingwell alley (so called), with the land attached thereto. Also,

my lot of land opposite the house occupied by William P.
19 Bailey, which I bought of Mrs. Elizabeth Wooster. Also, my lot of land on Wewacus hill (so called) on the west side of the road leading from Norwich town to Norwich city; and if she should intermarry and have children then said houses and lands are to descend to such children, and their heirs and assigns forever, share and share alike; but if she should not marry my will is that said houses and lands shall go to my grandchildren at her decease, and their heirs and assigns forever, share and share alike. I also give her my claim or demand in the Third Congregational Society in this city, amounting to three hundred dollars. What I have bequeathed to my said daughter Maria and the sum of money advanced to her late husband, Mr. Timothy Dwight Williams, when he went into business in New York, makes her full proportion of my estate specially bequeathed. Taking into view what I have advanced to each of my children it has been my aim to distribute my property equally among them.

To my son, Lucius W. Leffingwell, I give and devise my Russell Clark house and lot of land, my part of the old Austin house, and land belonging to the same. Two houses in New township and lands enclosed as gardens belonging to the same, respectively, in Grand street. The house, barn and garden occupied by Wm. P. Bailey, and the land on which said buildings stand. The land leased to Thomas O. H. Croswell, on which the Rev. Harry Croswell has erected a house. My half section of land opposite his house and premises in Ellsworth, and a small piece of about eighty acres east side, or principally east side of the meadow near to Philip Arna in said Ellsworth, and all my other western reserve lands. Said Lucius to have the use and improvement of these said houses and lands during his natural life, and then they are to descend to his children, their heirs and assigns forever, share and share alike.

To Roger Sherman Baldwin, Samuel J. Hitchcock and Henry White, Esqrs., and to the survivor and survivors of them, I give and devise in trust for the use of my son, Edward H. Leffingwell, during his natural life, my Ingersoll and brick house on the corner of Chapel and Temple streets, and the land attached to them respectively, my bake-house, store, wharf, and land thereto attached near the outlet of the canal. My half of the Townsend house and land in company with Elihu Sanford. Also, the land on Temple street south of the brick-house garden, extending to Leffingwell alley and from Temple street, easterly, one hundred feet. Also, the small piece of land between said store at the canal and Elihu San-
20 ford's brick store, meaning to devise all the lands on the west side of the canal which I purchased of Abraham Bishop.

And if said Edward H. should have children begotten in wedlock, to descend to them and their heirs forever, share and share alike.

If he should have no children, then at his decease to go to my grandchildren, their heirs and assigns forever, share and share alike.

To the president and fellows of Yale college, and their successors in office forever, for the benefit of the theological institution of

said college, I give and devise a farm of land in Kingsville, Ashtabula county, Ohio, containing one hundred and ten acres, or thereabouts, now occupied by and leased to James S. Leffingwell, during the natural lives of his father and mother, Christopher and Margaret Leffingwell, my five shares in the Tontine coffee-house, and three shares in Rimmon's Falls turnpike road. Also, an original right of land in the town of Enosburg, Vermont, in charge of William Barker, Esqr., of said Enosburg, with the mill-seat thereon.

The rest and residue of my estate I divide into five equal portions, one of which I give and devise to the children of my deceased son, William, one, to my daughter, Caroline, one, to my daughter, Maria, one, to the children of my son, Lucius, and one to Roger Sherman Baldwin, Samuel J. Hitchcock and Henry White, and to the survivor and survivors of them, in trust for my son, Edward.

And I do appoint the said Roger Sherman Baldwin, Samuel J. Hitchcock and Henry White, Esqrs., and the survivor and survivors of them, joint executors of this my last will and testament, hereby revoking all former wills.

In making the distribution of my estate I have taken into account the sums which my children respectively owe me for advances made. William C. and Lucius Leffingwell have given me notes, and I do hereby discharge them from the same.

In former wills I have named some of my relatives as executors, but I deem the course pursued in this most judicious.

To this will I have set my hand and seal, this eleventh day of October, A. D. 1834.

WILLIAM LEFFINGWELL. [SEAL.]

Signed, sealed, declared and published by the above-named William Leffingwell as and for his last will and testament, in presence of us, the subscribers, who have signed our names hereto as witnesses in the presence of the said testator, and of each other.

LOUIS HOTCHKISS.
ALVAN WILCOX.
JAMES DONAGHE.

21 EXHIBIT 2.

In the Court of Claims.

Copy of General Docket Entries in the Case of—

HENRY EVELYN PIERREPONT, Sole Surviving Executor of the Will of Hezekiah Beers Pierrepont,
vs.
THE UNITED STATES.

No. 1052. Spoliation.

March 19, 1886.—Petition filed, defendants notified, testimony ordered.
March 19, 1886.—Last will and testament and letters testamentary filed. Defendants notified.
March 30, 1886.—Printed petitions received, 5 to defendants.
May 22, 1886.—Notice to take testimony received by mail from W. G. Low, Esq., for claimant, and served on Assistant Attorney General Howard.
July 15, 1886.—Fifteen papers filed by claimant. Defendants notified.
Jan. 4, 1887.—Requests for facts and brief filed by claimant, 5 to defendants.
Jan. 14, 1887.—Letters of administration to Oliver S. White, administrator of William Leffingwell, filed, W. G. Low, Esq., attorney.
Oct. 29, 1887.—Seventeen (17) papers filed by claimant. Attorney notified.
Nov. 25, 1887.—Supplemental brief filed by claimant, 5 to defendants.
Nov. 28, 1887.—Defendants' conclusion of fact and law and brief filed. Attorney notified.
Nov. 6, 1888.—Ten envelopes filed by claimant, containing papers, said envelopes marked *q* to *z*, inclusive. Defendants notified.
Nov. 15, 1888.—Statement of facts filed by claimant. Defendants notified.
Nov. 15, 1888.—Call on Treasury Department issued.
22 Nov. 15, 1888.—Seventeen original papers filed by claimant. Defendants notified.
Nov. 15, 1888.—Reply of Treasury Department filed. Handed Chief Justice.
Nov. 15, 1888.—Argued and submitted.
Nov. 19, 1888.—Court filed conclusions of fact and of law to be reported to Congress.
Dec. 3, 1888.—See motion to certify up findings filed and allowed in case 3927.
Dec. 3, 1888.—Conclusions of fact and of law certified to Congress.

May 21, 1891.—Motion to substitute Frances M. Wiley and William Pierrepont in place of H. E. Pierrepont, deceased, as administrator, with letters of administration filed. Defendants notified. Allowed.
May 21, 1891.—Motion for certificate as to next of kin with brief filed. Defendants notified.
May 21, 1891.—Two depositions for claimant filed. Parties notified.
May 21, 1891.—Answer of defendants filed. Attorney notified.
May 21, 1891.—Ordered that certificate issue to Frances M. Wiley and William P. White, administrators (in place of Henry C. Pierrepont, executor, deceased) of Hezekiah B. Pierrepont, deceased.
May 21, 1891.—Delivered the above certificate to William G. Low, attorney of record.

A true and complete copy of the general docket entries in the aforesaid cause.
Test:
This — day of ——, A. D. 1892.

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

23 Court of Claims.

French spoliations.

HENRY EVELYN PIERREPONT, Sole Surviving Executor of the Will of Hezekiah Beers Pierrepont, Deceased,
vs.
THE UNITED STATES. } No. 1052.

Petition. Filed March 19, 1886.

To the honorable the judges of the Court of Claims:

The petition of Henry Evelyn Pierrepont, executor of the will of Hezekiah Beers Pierrepont, deceased, testate, of the city of Brooklyn, county of Kings, and State of New York, respectfully shows:

That he is a native-born citizen of the United States; that on the fifth day of September, in the year eighteen hundred and thirty-eight he duly qualified and received letters testamentary under the will of Hezekiah Beers Pierrepont, in the surrogate's office of the county of Kings, in said State, as executor of the said will, a duly authenticated copy of which said letters is filed herewith, which said will was proved and allowed by said surrogate's court, and is now of record therein, and a copy of which is filed herewith, on the fifth day of September, eighteen hundred and thirty-eight, and that he is still such executor; that the said Hezekiah Beers Pierrepont, was a native-born citizen of the United States; that in and by his said will he gave the whole residue of his estate to his executors in trust,

to pay his debts and comply with the directions of his said will. That the children of said H. B. Pierrepont him surviving were William C. Pierrepont, Anna C. Pierrepont, wife of Gerritt G. Van Wagenen, Henry E. Pierrepont, Emily C. P., wife of Joseph A. Perry, Frances Matilda P., who married Frederick S. Wiley, Harriet C. P., who married Edgar J. Bartow, Maria Theresa P., who married Joseph I. Bicknell, Julia E. P., who married John Constable, and Ellen I. P., who married James M. Minor, and Mary Montague Pierrepont.

24 That said Anna C. Pierrepont has since died, leaving one son, Gerritt Hubert Van Wagenen, her surviving, who is now living. That said Emily C. Perry and her husband *has* since died, leaving the following children, viz: William A. Perry, Frederick W. Perry, Charles M. Perry, Anna M. Perry, Fanny Perry and Mary Perry, who is married to James H. Gould, all of whom are now living.

That said Mary Montague Pierrepont died unmarried, and the remainder of her interest in the estate of her father, said H. B. Pierrepont, under the provisions of his will passed to said Henry E. Pierrepont.

That said Harriet C. Bartow died, leaving her surviving two sons and one daughter, viz: Pierrepont Bartow, Evelyn Bartow and Harriet Emma Bartow, now married to Henry Lawrence Sheldon, and her said husband, Edgar J. Bartow.

Said Harriet C. Bartow by her last will and testament, duly probated, left three-quarters of her estate to her husband, and one-quarter to her children, in accordance with the terms of her father's will. Said Edgar J. Bartow subsequently married Caroline Gamble, and died intestate, leaving him surviving his widow and two daughters, viz: Isabel Bartow, unmarried, and Caroline Gamble Bartow, since married to Rev. Frederick Burgess. Said Edgar J. Bartow died a resident of Brooklyn, New York.

That said Maria Theresa Bicknell died, leaving the following children: Henry Pierrepont Bicknell, Josephine Theresa Bicknell, since married to John P. Foster, Emeline I. Bicknell, Pierrepont C. Bicknell, George A. Bicknell, Joseph I. Bicknell, Evelyn M. Bicknell, Eugene P. Bicknell, Maria Theresa P. Bicknell, Mary Isabel Bicknell and William A. P. Bicknell, all of whom are now living.

(That said Henry E. Pierrepont is still living.)

(That said Matilda P. Wiley is still living.)

(That said Julia E. Constable is still living.)

That said Ellen I. Minor and her husband have since died, leaving the following children, viz: Lucy L. Minor, Anna Pierrepont Minor, Pierrepont Minor, Virginia C. Minor, Ellen W., since married to Rev. N. C. S. Poyntz, Chatherine B. Minor and Charles L. Minor, all of whom are now living, and that said Ellen I. Minor died intestate.

That said Wm. C. Pierrepont has since died, leaving his personal property by will to be divided, share and share alike, among his three surviving daughters and the children of two deceased daughters, respectively, the said grandchildren to take *per stirpes*.

25 The said surviving daughters are Sarah Eveline Hill, a widow, Emily J. Wolcott, a widow, and Mary D. Pierrepont, unmarried. The grandchildren are Anna P. Van Wagenen and Hubert P. Van Wagenen, children of a deceased daughter of said Wm. C. Pierrepont, and Hugh White, William P. White, Anna M. White, Hubert L. White, Flominda White, Mary White, Cornelia B. White, Isabel White, De Lancey P. White, Charles C. White and John D. White children of a deceased daughter of said Wm. C. Pierrepont. That one, Wm. Leffingwell, was between the years 1794 and 1800 a copartner of said Hezekiah Beers Pierrepont, the firm name and style being Leffingwell & Pierrepont, doing business in the city of New York.

That said Wm. Leffingwell has since deceased.

The share of William Leffingwell, late of New Haven, Connecticut, in whatever may be recovered from the claims of the firm of Leffingwell & Pierrepont under the provisions of the French spoliation act, is part of the residuary estate of said William Leffingwell, which in and by his last will was bequeated as follows:

"The rest and residue of my estate I divide into five equal portions, one of which I give and devise to the children of my deceased son, William, one to my daughter Caroline, one to my daughter Maria, one to the children of my son Lucius, and one to Roger Sherman Baldwin, Samuel J. Hitchcock and Henry White, and to the survivor or survivors of them, in trust for my son Edward."

The children of the testator's son William are:

1. William A. Leffingwell, of New York city.
2. Mary M. Leffingwell, of New Haven, Conn.
3. Frederick O. Leffingwell, of Brooklyn, New York, who died in 1857 intestate, leaving a widow, Emma R. Leffingwell, and three children viz:

1. William H. Leffingwell, of Brooklyn, New York.
2. Caroline A. Leffingwell, of Brooklyn, New York.
3. Emma P. Leffingwell, of Brooklyn, New York.

4. Josephine L. Leffingwell, married Solomon Leche, and died after her husband, intestate, and leaving five children, viz:

1. Josephine L. Leche, died after her mother, aged 15 years, unmarried and intestate.
2. David Leche, died in 1881, unmarried and intestate.
3. Solomon Leche, died in Shrewsbury, Penn., leaving a will, and unmarried.

26 4. William A. Leche, died after his mother, aged 15 years, unmarried and intestate.

5. Adolphus H. Leffingwell, died in New York city in 1869, leaving a will in which he bequeathed one-half of his estate to his brother, said William A. Leffingwell, for life, and the rest and remainder of his property and estate to his two nieces, said Caroline A. Leffingwell and Emma P. Leffingwell.

Caroline Leffingwell, daughter of said William Leffingwell, married Augustus R. Street, and died at New Haven, Connecticut, after her husband and after all her children, leaving a last will, proved August 29, 1877, by which she bequeaths all her residuary estate to

"the president and fellows of Yale college in New Haven," and the Women's Board of Missions, a corporation, incorporated by the legislature of Massachusetts in 1869.

Maria S. Williams, a daughter of said William Leffingwell, died in 1866 a widow without issue, leaving a last will proved in the probate district of New Haven, February 16, 1866, by which she gives all her residuary property and estate to her niece, Sarah B. Leffingwell, of New Haven, Conn.

The children of Lucius W. Leffingwell, a son of said William Leffingwell, are:

1. William Leffingwell, who died August, 1881, leaving a widow, Frances N. Leffingwell, and one child, William Leffingwell, who both reside at San Rafael, California.
2. Sarah Beers Leffingwell, of New Haven, Conn.
3. Henry Leffingwell, of Montclair, New Jersey.
4. Douglass Leffingwell, of New Haven, Conn.
5. Christopher Leffingwell, of Bar Harbor, Maine.
6. James S. Leffingwell, of Oakland, California.
7. Maria, who married Robert Tod, and died in June, 1872, intestate and without issue.
8. Caroline S. Leffingwell, of New Haven, Conn.
9. Lucius D. Leffingwell, who died at Cleveland, Ohio, June 16, 1884, unmarried, leaving a last will, by which he bequeathed to his mother Emily N. W. Leffingwell, of said Cleveland, the use of all his property and estate during her life, with remainder and reversion after her death to his adopted sister, Lucy Adams Leffingwell, of said Cleveland.

Roger S. Baldwin, Samuel J. Hitchcock and Henry White, to whom one-fifth of his residuary estate was devised and bequeathed in said will of William Leffingwell, in trust for his son, Ed-
27 ward H. Leffingwell, are all dead, and William A. Beckley, of New Haven, Connecticut, is now sole trustee under said will of the property and estate of said Edward H. Leffingwell, who is living.

And your petitioner further shows that the said copartnership of Leffingwell & Pierrepont, consisting of said William Leffingwell and said Hezekiah B. Pierrepont, each having an equal interest, had during the lifetime of said Leffingwell and Pierrepont a valid claim to indemnity upon the French government, arising out of illegal capture, detentions, seizures, condemnations and confiscations prior to the ratification of the convention between the United States and the French Republic, concluded on the thirtieth day of September, in the year of our Lord eighteen hundred, the ratifications of which were exchanged on the thirty-first day of July following, none of which claims were embraced in the convention between the United States and the French Republic, concluded on the thirtieth day of April, in the year eighteen hundred and three, nor in the treaty between the United States and Spain, concluded on the twenty-second day of February, in the year eighteen hundred and nineteen, nor in the treaty between the United States and France, concluded on the fourth day of July, in the year eighteen hundred and thirty-

one; and none of said claims have ever been paid to the said Hezekiah Beers Pierrepont, nor to his legal representatives or descendants, nor to the said William Leffingwell, nor to his legal representatives or descendants.

And your petitioner further shows that no assignment or transfer of any of said claims, or any part thereof, or interest therein, has been made except as stated in this petition; that said claimant as executor as aforesaid is justly entitled to the amount hereinafter claimed from the United States, after allowing all just credits and offsets; and that said Hezekiah B. Pierrepont was the last survivor of said copartnership, and said petitioner makes this petition in behalf of all said copartners therein; and that the claimant, your petitioner, the original and every prior owner thereof, and every person now interested therein, were and are citizens of the United States, and at all times have borne true allegiance to the Government of the United States, and have not in any way voluntarily aided, abetted, or given encouragement to rebellion against the said Government; and he believes the facts as stated in this petition to be true.

That in and by the convention ratified on the thirty-first day of July, in the year eighteen hundred and one, and by the acts
28 and agreements of the United States and France, prior to and connected therewith, the Government of the United States did release France from any payment of said claims for indemnity, which claims were recognized and admitted by France to be justly due to citizens of the United States for the illegal captures, detentions, seizures, condemnations and confiscations aforesaid, for a valuable consideration accruing to the United States, and all the people thereof, by the surrender by France of her claims to the performance by the United States of treaties previously made by the two governments aforesaid.

That the fifth article of amendment of the Constitution of the United States provides that private property shall not be taken for public use without just compensation; in consequence of all which acts of the Government of the United States, and of the said provision in the Constitution of the United States, the United States assumed the liability originally inherent in and obligatory upon France, and are bound in equity and good conscience to pay for all valid claims or indemnity which were originally upon, or due from, the French government, as aforesaid.

And your petitioner further shows: That the ship "Confederacy" of which Scott Jencks was master, a duly registered vessel of the United States, said ship and her cargo being owned by said Leffingwell and Pierrepont, both citizens of the United States, was illegally captured off the coast of France in lat. 48° 30′ N. and long. 19° 30′ W. on the third or fourth day of June, A. D. 1797, by the French privateer "Duguai Trouin," Captain Dutache, and taken into Nantes in France, and there illegally condemned and sold in latter part of A. D. 1797. That such capture, condemnation and sale were made contrary to the laws of nations and the treaties between the United States and France; and the petitioner asks

leave to make such additions to this statement as further discovery by evidence obtained from abroad by the Secretary of State, under the act "To provide for the ascertainment of claims of American citizens for spoliations committed by the French prior to the thirty-first day of July, eighteen hundred and one, approved Jan. 20, 1885" under which act your petitioner files this petition, or otherwise, and prays that reference may be had to all documents which may be filed in this court relating to the said ship "Confederacy" for any evidence therein contained which may be material to support his claim.

29 And your petitioner further shows that Mr. Peter F. Dobreé, the vice-consul of the U. S. at Nantes, acted as agent for Leffingwell and Pierrepont, and attended the sale of the said ship "Confederacy," and reported that her cargo and effects sold at auction at Nantes in December, A. D. 1797, for livres 1,650,701.11-7, equal to about $330,000 in American money. The proceeds of said forced sale of the ship and cargo were deemed by Leffingwell & Pierrepont much less than the value at the port of destination, which they in various writings represented as equal to $400,000 over the insurance money recovered, said sum of $400,000 being the amount mentioned as claimed for seizure of said ship "Confederacy" in the report of Mr. Holmes to the U. S. Senate, February 8th, 1827, being numbered "67" on the list in said report. The amount of insurance upon the cargo was £35,000, and the amount recovered was £32,176 1s. 5d., or say $160,880.50. That the invoices show that the cargo cost in China £35,647 15s. 4d.

Wherefore your petitioner prays that the said sum of four hundred thousand dollars may be adjudged to be due from the United States to him as executor as aforesaid, with such rate of interest thereon, and for such term of time, as in equity and good conscience is due, and such costs, charges and expenses as to the court may seem proper.

HENRY EVELYN PIERREPONT.

New York, March 12th, 1886.

WM. G. LOW,
Attorney for Petitioner, 102 *Broadway, New York City.*

UNITED STATES OF AMERICA, *Southern District of New York*, } ss:

On this twelfth day of March, A. D. 1886, before the subscriber, Joseph B. Braman, a commissioner of the Court of Claims, duly commissioned and sworn, personally appeared Henry Evelyn Pierrepont, the claimant, who subscribed the foregoing petition in my presence, and made solemn oath that he has read the said petition and knows the contents thereof, and that the same is true so far as his personal knowledge goes; and as to all other matters therein stated he believes the said petition to be true.

30 In witness whereof I have hereunto subscribed my name, and affixed my official seal, this twelfth day of March, A. D. 1886.

JOSEPH B. BRAMAN,
Commissioner for the United States Court of
[SEAL.] *Claims in and for the State of New York,*
Resident in said City of New York.

Office: Equitable building, 120 Broadway, New York city.

Court of Claims.

French spoliations.

(Act of January 20, 1885; 23 Stat. L., 283.)

Vessel, ship Confederacy.

Master, Scott Jenckes.

No. of case.	Claimant.
1052.	Henry E. Pierrepont, executor of the will of Hezekiah B. Pierrepont, the last surviving partner of the firm of Leffingwell & Pierrepont.
3927.	T. B. Bleecker, Jr., and Charles C. Leary, receivers of the New York Insurance Company.

Conclusions of Fact.

These cases were tried before the Court of Claims on the fifteenth day of November, A. D. 1888. The claimants were represented by William G. Low, and Messrs. Sanders, Myers and Henry, and The United States, defendants, by the Attorney General, through his assistant in the Department of Justice, Benjamin Wilson, Esq., with whom was Assistant Attorney General Rob. A. Howard.

The court, upon the evidence and after hearing the arguments and considering same, with the briefs of counsel on each side, determine the facts to be as follows:

31 I.

The ship Confederacy, a registered vessel of the United States of 459 tons measurement, Captain Scott Jenckes, master, owned by William Leffingwell and said Hezekiah B. Pierrepont, partners, the said H. B. Pierrepont, deceased, of whose will said H. E. Pierrepont is executor, being the last survivor, sailed on a commercial voyage on or about January 5, 1797, with a cargo of tea, sugar and other merchandise owned by said partners, from Canton, China, bound for Hamburg. All of said persons were citizens of the United States.

II.

While peacefully pursuing her voyage said vessel was seized off the coast of France, in latitude 48° 30′ N. and longitude 19° 30′

W., on or about June 4, 1797, by the French privateer, Duquai Trouin, Captain Dutache, and taken to Nantes, France, where she was condemned by a French prize court as a good prize, and under a decree of said court was sold with all her cargo, and so became a total loss, both vessel and cargo, to the owners and insurers.

III.

The ground of condemnation was that said vessel did not have a rôle d'équipage in due form.

IV.

The value of said vessel was.....	$30,000 00
The fair value of the cargo was the amount for which the same was sold, to wit.....	298,349 68
	$328,349 68
The owners were paid by the insurers to the amount of.	167,871 39
	$160,478 29

V.

Said owners were insured by said New York Insurance Company, of which said Bleecker and Leary are receivers, in the sum of twelve thousand dollars, which sum was paid to them by said company as and for a total loss.

32 The balance of said insurers' money paid to said owners as aforesaid was from other insurers who have presented no claims in this court.

Said claims were not embraced in the convention between the United States and the Republic of France concluded on the 30th of April, 1803. They were not claims growing out of the acts of France allowed and paid in whole or in part under the provisions of the treaty between the United States and Spain, concluded on the 22d of February, 1819, and were not allowed in whole or in part under the provisions of the treaty between the United States and France of the 4th of July, 1831.

The claimants, in their representative capacity, are the owners of said claims, which have never been assigned except as aforesaid.

Conclusions of Law.

The court decides as conclusions of law that said seizure and condemnation were illegal, and the owners and insurers had valid claims of indemnity therefor upon the French government prior to the ratification of the convention between the United States and the French Republic, concluded on the 30th day of September, 1800; that said claims were relinquished to France by the Government of the United States by said treaty in part consideration of the relinquishment of certain national claims of France against the United States; and that the claimants are entitled to the following sums from the United States.

Henry E. Pierrepont, executor of the will of Hezekiah B. Pierrepont, the last surviving partner (deceased) of the firm of Leffingwell & Pierrepont, one hundred and sixty thousand four hundred and seventy-eight dollars and twenty-nine cents. ($160,478.29.)

T. B. Bleecker, Jr., and Charles C. Leary, receivers of the New York Insurance Company, twelve thousand dollars. ($12,000.00.)

BY THE COURT.

Filed November 19, 1888.

Deposition of Wm. Henry Leffingwell.

Filed May 21, 1891.

Deposition of witness produced, sworn, and examined at the hour of nine thirty o'clock, a. m., on the twenty-first day of May, A. D. 1891, at Washington, D. C., before me, the undersigned, a
33 notary public in and for the District of Columbia, in a certain cause now pending in the Court of Claims wherein Henry Evelyn Pierrepont, sole surviving executor of the will of Hezekiah Beers Pierrepont, is claimant and The United States are defendants, when was present William G. Low, counsel on behalf of the claimant.

William H. Leffingwell, having been produced as a witness on behalf of the claimant, was by me sworn before any question was put to him, to tell the truth, the whole truth, and nothing but the truth relative to said cause, and thereupon deposed, and said that his name is William H. Leffingwell, that he is forty-one years of age, and that his place of residence is Brookland, New York State.

And thereupon the said WILLIAM H. LEFFINGWELL was examined by the counsel for the claimant, and in answer to interrogatories, testified as follows:

Q. State your full name, age and place of residence.

A. William Henry Leffingwell; I am forty-one years of age, and live in Brooklyn, New York State.

Q. State the full name of your father and his relationship, if any, to William Leffingwell, mentioned in the petition herein as the partner of Hezekiah Beers Pierrepont.

A. My father's name was Frederick Oscar Leffingwell, whose father was William Leffingwell, whose father was William Leffingwell, the partner of said Hezekiah Beers Pierrepont.

Q. State whether William Leffingwell left a will, and, if so, who were the executors, and are they now living.

A. He left a will which was duly probated. I forget the names of the executors, but I know they are all dead.

Q. Who now represents the estate of said William Leffingwell?

A. Oliver S. White as administrator *de bonis non* with the will annexed, as I understand by the general consent of the next of kin.

Q. State whether Henry E. Pierrepont, as executor of Hezekiah B. Pierrepont, in his lifetime and whether Mrs. Frances M. Wiley

and William Pierrepont White, as administrators with the will annexed now, since his death, represent the next of kin of said William Leffingwell.

A. Yes, he did, and they do.

Objected as involving a question of law.

The said witness was then cross-examined by the counsel for the United States, and, in answer to interrogatories, testified as follows:

Q. Is a copy of the will of Mr. Leffingwell on file in the cause, or have you a copy with you?

A. No.

Redirect Q. Have you seen a copy of the said will?

A. I have.

34 Q. Has the estate been all settled except this award, and to whom will it go?

A. The estate has been settled except this part, and that will go under the will to his five children and their estates.

Objected to as involving conclusions of law, and as secondary evidence of the contents of the will.

WILLIAM HENRY LEFFINGWELL.

I, George W. Drew, a notary public in and for the District of Columbia, certify that at the time and place aforesaid William Henry Leffingwell, a witness on behalf of the claimant in the above-entitled cause, was by me sworn before any question was put to him, to tell the truth, the whole truth, and nothing but the truth relative to the said cause, and his answers were taken down in my presence, and his deposition as above set forth was read over to him, and signed by him before me at the time and place aforesaid.

In witness whereof I have hereunto set my hand and official seal, this twenty-first day of May, A. D. 1891.

[SEAL.] GEO. W. DREW,
Notary Public.

Deposition of Wm. Pierrepont White.

Filed May 21, 1891.

Deposition of witness produced, sworn, and examined at the hour of three thirty p. m., on the 20th day of May, A. D. 1891, at Washington, D. C., before me, the undersigned, a notary public in and for the District of Columbia, in a certain cause now pending in the Court of Claims, wherein Henry Evelyn Pierrepont, sole surviving executor of the will of Hezekiah Beers Pierrepont, is claimant and The United States are defendants, when was present William G. Low, counsel on behalf of the claimant.

William Pierrepont White, having been produced as a witness on behalf of the claimant, was by me sworn before any question was put to him to tell the truth, the whole truth, and nothing but the

truth relative to said cause, and thereupon deposed and said that his name is William Pierrepont White, that he is twenty-four years of age, and that his place of residence is Utica, New York State.

And thereupon the said WILLIAM PIERREPONT WHITE was examined by the counsel for the claimant, and in answer to interrogatories testified as follows:

35 Q. State your full name, age, and place of residence.

A. William Pierrepont White; I am twenty-four years old, and live in Utica, New York State.

Q. State the full name of your mother, also her maiden name, and her relationship, if any, to Hezekiah Beers Pierrepont, and what relation, if any, was said Hezekiah Beers Pierrepont to one William C. Pierrepont.

A. Anna Maria White. Her maiden name was Anna Maria Pierrepont. She was a grand-daughter of Hezekiah Beers Pierrepont, who was the father of William C. Pierrepont, who was her father.

Q. State whether Hezekiah Beers Pierrepont left a will, and, if so, who were the executors under the same, and are they now living?

A. He left a will which was duly probated in Kings county, New York State, and a copy of which is on file in this case in this court. The executors were his son William C. Pierrepont, Henry E. Pierrepont, and his son-in-law Joseph A. Perry, being all who qualified, and Gerrit G. Van Wagenen, who did not qualify, all of whom are now dead.

Q. State who now represents the estate of said Hezekiah Beers Pierrepont.

A. At a meeting of the next of kin at which all branches of the family were represented Mrs. Frances M. Wiley, a daughter of said Hezekiah Beers Pierrepont, and William Pierrepont White, a great-grandson of said Hezekiah Beers Pierrepont, were unanimously selected to apply for letters of administration with the will annexed. That said application was made to the proper court, and such letters duly granted to them, and an exemplified copy of which has been filed in this case in this court, together with a certificate from the court granting said letters that adequate security had been given by them for the legal distribution of said estate.

Q. State whether you represent before this court the next of kin of William Leffingwell, deceased, the partner of Hezekiah Beers Pierrepont, mentioned in the petition in this case.

A. I do. By arrangement with said next of kin of their representative Oliver S. White, whose certificate of appointment as administrator *de bonis non* with the will annexed of the estate of said William Leffingwell, deceased, which appointment was applied for at the request of a number of said next of kin, and which said certificate is now on file in this office herein, Henry Evelyn

36 Pierrepont up to the time of his death, and since their appointment as administrators with the will annexed said

Frances M. Wiley and William Pierrepont White have represented said next of kin.

Q. Under this arrangement have you given adequate security for legal disbursement of the award?

A. I have. A copy of the bond is on file in the clerk's office of the court herein. The said bond is in double the amount of the award.

The said witness was then cross-examined by the counsel for the United States, and, in answer to interrogatories, testified as follows:

Cross-int. To whom, as you understand, will the money belonging to the Pierrepont estate go under the will of Hezekiah B. Pierrepont, or otherwise?

A. That is divided into ten portions, one portion to go to each of his ten children, or their estates.

Cross-int. Are you related to William Leffingwell, deceased, the partner of Hezekiah B. Pierrepont?

A. Not to my knowledge.

Cross-int. Does there exist at present to your knowledge a will of said Leffingwell?

A. I have not seen the will. I have only seen the facts stated in the petition in this case in regard to it.

Cross-int. When did Henry E. Pierrepont, executor and former claimant, die?

A. March 28th, 1888.

Redirect:

Q. State anything you know showing that you represent the next of kin of William Leffingwell aforesaid.

A. Mr. Leffingwell's heirs or next of kin with Mr. Henry E. Pierrepont always pressed the claim against the Government together, Mr. Pierrepont being the active man in the suit, and authorized by the next of kin of Leffingwell to represent them; and since his death Mrs. Frances M. Wiley and William Pierrepont White have been authorized to represent the next of kin in place of Henry E. Pierrepont, deceased.

Counsel for the United States objects to testimony as to the Leffingwells as hearsay.

WM. PIERREPONT WHITE.

I, George W. Drew, a notary public in and for the District of Columbia, certify that at the time and place aforesaid William
37 Pierrepont White, a witness on behalf of the claimant in the above-entitled cause, was by me sworn, before any question was put to him, to tell the truth, the whole truth and nothing but the truth relative to the said cause, and that his answers were taken down in my presence, and his deposition as above set forth was read over to him, and signed by him before me at the time and place aforesaid.

In witness whereof I have hereunto set my hand and official seal this 20th day of May, A. D. 1891.

[L. S.] GEO. W. DREW,
Notary Public.

Motion for Certificate.

Filed May 21, 1891.

Court of Claims.

(Spol.) No. 1052.

HENRY EVELYN PIERREPONT, Sole Surviving Executor of the Will of Hezekiah Beers Pierrepont, Deceased,
vs.
THE UNITED STATES.

To the honorable the judges of the Court of Claims:

Now comes Henry Evelyn Pierrepont, by his attorney William G. Low, and moves that a certificate to the Treasury Department issue, certifying that he represents the next of kin of Hezekiah Beers Pierrepont.

WM. G. LOW,
Claimant's Attorney.

Allowed.
WILLIAM A. RICHARDSON,
Chief Justice.

38 *Brief in Support of Motion for Certificate.*

Filed May 21, 1891.

Court of Claims.

(Spol.) No. 1052.

HENRY EVELYN PIERREPONT, Sole Surviving Executor of the Will of Hezekiah Beers Pierrepont, Deceased,
vs.
THE UNITED STATES.

The claimant respectfully shows to the court that he represents the next of kin of Hezekiah Beers Pierrepont, deceased, under his will on file in this case.

That on March 18th, 1888, said Henry E. Pierrepont died, and that on May 18, 1891, Frances M. Wiley and Wm. Pierrepont White were appointed administrators with the will annexed of estate of said Hezekiah Beers Pierrepont, and an exemplified copy of which letters has been filed with the clerk of this court, together with a certificate of the court which granted the administration that they have given adequate security for the legal disbursement of the estate, and that a motion will be made simultaneously herewith to

substitute said Frances M. Wiley and Wm. Pierrepont White for said Henry E. Pierrepont as claimant in this case.

That said Frances M. Wiley and Wm. Pierrepont White represent the next of kin herein.

Respectfully submitted.

WM. G. LOW,
Attorney for the Claimant, 100 *Broadway, New York City.*

39 *Defendants' Answer to Claimant's Motion for a Certificate as to Next of Kin.*

Filed May 21, 1891. E. W.

In the Court of Claims.

W. P. WHITE, Adm'r of H. B. Pierrepont,
vs.
THE UNITED STATES. } No. 1052.

Ship "Confederacy"—Jenckes, master.

Upon the motion of claimant for a certificate as to next of kin defendants say that the person to whom the award was made is dead; that there is a will of each of the partners; that one will is on file, and in that case the question is submitted on the will, the terms of which are particularly referred to, and the deposition of the present administrator; as to the next of kin of the other partner, and the administrator does not know who is to take under the will mentioned, and no proper evidence as to the will is before the court, which brings this case under the principle of the remanded case of E. Francis Riggs, administrator of the surviving partner of Shreve & Lawrason, and of other cases remanded.

Respectfully submitted.

ALEX. C. MOORE.
Assistant Attorney.

40 *Motion to Substitute Administrators.*

Filed May 21, 1891.

Court of Claims.

(Spol.) No. 1052.

HENRY EVELYN PIERREPONT, Sole Surviving Executor of the Will of Hezekiah Beers Pierrepont, Deceased,
vs.
THE UNITED STATES.

To the honorable the judges of the Court of Claims:

Now comes Frances M. Wiley and William Pierrepont White, by their attorney, William G. Low, and move that they be substituted as administrators with the will annexed of Hezekiah Beers Pierre-

pont, deceased, in place of Henry Evelyn Pierrepont, sole surviving executor of the will of said Hezekiah Beers Pierrepont, now also deceased.

WM. G. LOW,
Claimant's Att'y.

Allowed.

WILLIAM A. RICHARDSON,
Chief Justice.

Supplemental Brief. Filed May 21, 1891.

Court of Claims.

Spol. No. 1052.

HENRY EVELYN PIERREPONT *et al.*
vs.
THE UNITED STATES.

Now comes William G. Lowe of counsel for claimant and respectfully shows:

I.

That the claimant represents the next of kin of Hezekiah B. Pierrepont as next of kin as well as under the will.
See deposition of Wm. Pierrepont White.

41 II.

That the claimant represents the next of kin of William Leffingwell as such as well as under the will.
See deposition of Wm. Leffingwell.

III.

That said claimants, Wiley and White, were appointed as administrators with the will annexed under the statute, because there is no other way to make the distribution among the next of kin according to law.

Respectfully, WM. G. LOWE, *Of Counsel.*

Court of Claims, Washington, D. C.

I certify that the foregoing are true copies of original papers filed in the Court of Claims in the case of Henry E. Pierrepont, sole surviving executor of the will of Hezekiah Beers Pierrepont *vs.* The United States, No. 1052, French spoliation, and that it appears that the testimony of William H. Leffingwell and William Pierrepont White, and the certified copies of the probate records filed in this case were the evidence relied upon in support of the motion for the issuance by the court of a certificate to the Secretary of the Treasury that Frances M. Wiley and William Pierrepont White, administrators (in place of Henry E. Pierrepont, executor, de-

ceased), represent the next of kin of Hezekiah Beers Pierrepont, deceased.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at Washington city, this 18th day of March, A. D. 1892.

[SEAL.] JOHN RANDOLPH,
Ass't Clerk Court of Claims.

42 EXHIBIT 3.

DISTRICT OF NEW HAVEN, *ss:*

Probate Court, New Haven, Jan. 11th, 1887.

Estate of WILLIAM LEFFINGWELL, Late of New Haven, in said District, Deceased.

A Heaton Robertson, Esq., judge of said court.

To Oliver S. White, of the town and county of New Haven, Greeting:

Whereas, William Leffingwell, late of New Haven, in said district, having while he lived and at the time of death goods, chattels, credits and estate in said district, now lately died intestate; by virtue whereof the power of administration and full disposition of all and singular the goods, chattels, credits and estate of the said deceased, and also the hearing, examining and allowing the accounts of the administration thereof, appertains unto me; and being desirous that the goods, chattels, credits and estate of the said deceased shall be well and truly administered, and having full confidence in your fidelity, care and good management; therefore, I do by these presents, hereby commit unto you full power to administer *de bonis non* with the will annexed, for the sole purpose and end of taking all proper and reasonable measures to prosecute and collect certain claims against the United States Government, commonly known as the French spoliation claims, and also to render an account of your administration when ordered by this court. And I do by these presents ordain, depute and constitute you administrator *de bonis non* with the will annexed, of all and singular the goods, chattels, credits and estate aforesaid.

[L. S.] A. HEATON ROBERTSON, *Judge.*

EXHIBIT 4.

(Calendar No. 2707.)

51st Congress, 2d session. S. 4819.

(Report No. 2320.)

In the Senate of the United States.

JANUARY 9, 1891.

Mr. Frye introduced the following bill; which was read twice and referred to the Committee on Claims.

43 FEBRUARY 18, 1891.

Reported by Mr. Higgins with amendments, viz., omit the parts struck through and insert the part printed in *italics*.

A bill to provide for the payment of the French spoliation claims, in accordance with the findings of the Court of Claims.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That there is hereby appropriated, out of any moneys in the Treasury not otherwise appropriated, such sum and sums as shall be sufficient to pay the amounts [and shall be]* which have been ʌ found due by the Court of Claims to the respective claimants for spoliations committed by the French, as the same have [and hereafter shall be]* been ʌ ascertained by the said court under an act of Congress entitled "An act to provide for the ascertainment of claims of American citizens for spoliations committed by the French prior to the thirty-first day of July, eighteen hundred and one," approved January twentieth, eighteen hundred and eighty-five: *Provided, that in all cases where the original sufferers were adjudicated bankrupts the awards shall be made on behalf of the next of kin, instead of to assignees in bankruptcy, and the awards in the cases of individual claimants shall not be paid until the Court of Claims shall certify to the Secretary of the Treasury that the personal representatives on whose behalf the award is made represent the next of kin, and the courts which granted the administrations, respectively, shall have certified that the legal representatives have given adequate security for the legal disbursement of the awards.*

(Calendar No. 2707.)

51st Congress, 2d session. S. 4819.

(Report No. 2320.)

A bill to provide for the payment of the French spoliation claims, in accordance with the findings of the Court of Claims.

By Mr. Frye.

1891, January 9. Read twice, and referred to the Committee on Claims.

February 18. Reported with amendments.

44 51st Congress, 2d session. H. R. 13658.

In the Senate of the United States.

FEBRUARY 21, 1891.

Referred to the Committee on Appropriations, and ordered to be printed.

Amendment reported by Mr. Higgins, from the Committee on Claims, and intended to be proposed to the bill (H. R. 13658) mak-

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"Parts struck through" are indicated in manuscript above.—E. A. A.
[*Words in brackets indicated in above paragraph as "parts struck through."]

ing appropriations to supply deficiencies in the appropriations for the fiscal year ending June thirtieth, eighteen hundred and ninety-one, and for prior years, and for other purposes, viz: Insert the following:

That there is hereby appropriated, out of any moneys in the Treasury not otherwise appropriated, such sum or sums as shall be sufficient to pay the amounts which have been found due by the Court of Claims to the respective claimants for spoliations committed by the French, as the same have been ascertained by the said court under an act of Congress, entitled "An act to provide for the ascertainment of claims of American citizens for spoliations committed by the French prior to the thirty-first day of July, eighteen hundred and one," approved January twentieth, eighteen hundred and eighty-five: Provided, that in all cases where the original sufferers were adjudicated bankrupts the awards shall be made on behalf of the next of kin, instead of to assignees in bankruptcy, and the awards in the cases of individual claimants shall not be paid until the Court of Claims shall certify to the Secretary of the Treasury that the personal representatives on whose behalf the award is made represent the next of kin; and the courts or officers which granted the administrations, respectively, shall have certified that the legal representatives have given adequate security for the legal disbursement of the awards.

51st Congress, 2d session. H. R. 13658.

Amendment reported by Mr. Higgins, from the Committee on Claims, and intended to be proposed to the bill (H. R. 13658) making appropriations to supply deficiencies in the appropriations for the fiscal year ending June 30, 1891, and for prior years, and for other purposes.

45 1891, February 21. Referred to the Committee on Appropriations, and ordered to be printed.

EXHIBIT 6.

Transcript Certificate.

TREASURY DEPARTMENT, REGISTER'S OFFICE,
WASHINGTON, D. C., *May 9th*, 1892.

Pursuant to section 882 of the Revised Statutes of the United States I, W. S. Rosecrans, Register of the Treasury Department, do hereby certify that the annexed is a transcript from the books and proceedings of the Treasury Department, and true copies of the originals on file in the case of Henry E. Pierrepont, executor of the will of Hezekiah B. Pierrepont, etc.

W. S. ROSECRANS, *Register.*
A. H.

Be it remembered that W. S. Rosecrans, Esq., who certified the annexed transcript, is now, and was at the time of doing so, Register

of the Treasury of the United States, and that full faith and credit are due to his official attestations.

In testimony whereof I, Charles Foster, Secretary of the Treasury of the United States, have hereunto subscribed my name, and caused to be affixed the seal of this department, at the city of Washington, this 9th day of May, in the year of our Lord 1892.

[SEAL.] CHARLES FOSTER,
Secretary of the Treasury.

Office of Register of the Treasury.

Treasury Department,
Office of the First Auditor.
No. 282,335.
Recorded May 25, '91.

TREASURY DEPARTMENT,
FIRST AUDITOR'S OFFICE, *May* 23, 1891.

I hereby certify that I have examined and adjusted an account between the United States and Henry E. Pierrepont, executor of the will of Hezekiah B. Pierrepont, the last surviving partner
46 (deceased) of the firm of Leffingwell and Pierrepont, and find that the sum of one hundred and sixty thousand four hundred seventy-eight and $\frac{29}{100}$ dollars is due from the United States to him, being amount appropriated by deficiency act of March 3, 1891, to pay the finding of the Court of Claims in his favor for indemnity for spoliations by the French prior to July 31, 1801, on the ship "Confederacy," the proofs required by said act having been duly furnished; which sum is payable from the appropriation for "payments of French spoliation claims," to Frances M. Wiley and Wm. Pierrepont White (present) administrators of Hezekiah B. Pierrepont, deceased, as appears from the statement and vouchers herewith transmitted for the decision of the First Comptroller of the Treasury thereon.

GEO. P. FISHER,
First Auditor.

$160,478.29.
To the First Comptroller of the Treasury.

$160,478.29. FIRST COMPTROLLER'S OFFICE, *May* 26, 1891.

I admit and certify that the sum of one hundred and sixty thousand four hundred and seventy-eight and $\frac{29}{100}$ dollars is due from the United States on the above account, and payable from appropriation named above.

J. R. GARRISON,
Acting First Comptroller.

D'ft to Wm. G. Low, att'y, 100 Broadway, New York.
To the Register of the Treasury.
282,335.

Court of Claims.

French spoliation cases.

Vessel, ship Confederacy.
Master, Scott Jenckes.

In the Matter of the Motion of WILLIAM G. LOW, Att'y of Frances M. Wiley, and WM. PIERREPONT WHITE, Adm's (in Place of Henry E. Pierrepont, Ex'r, Dec'd) of Hezekiah B. Pierrepont, Dec'd, for a Certificate of the Court under the Act of March 3, 1891.

The defendants having been heard thereon the court orders that the following certificate be issued to the Secretary of the Treasury:

47 To the Secretary of the Treasury:

The Court of Claims hereby certifies that it appears by evidence on file in the above-entitled case that said Frances M. Wiley and Wm. Pierrepont White, adm'rs (in place of Henry E. Pierrepont, ex'r, dec'd) of Hezekiah B. Pierrepont, dec'd, in whose behalf an appropriation (or award) was made by the act of March 3, 1889, entitled "An act making appropriations to supply deficiencies in the appropriations for the fiscal year ending June thirtieth, eighteen hundred and ninety-one, and for prior years, and for other purposes," for the sum of one hundred and sixty thousand four hundred and seventy-eight dollars and twenty-nine cents ($160,478.29.) represents the next of kin of Hezekiah B. Pierrepont, dec'd, the original owner of the claim upon which said award was made.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at Washington, this 21st day of May, A. D. 1891.

[SEAL.] JOHN RANDOLPH,
Ass't Clerk Court of Claims.

P. O. address, No. 100 Broadway, New York city.

2445 | Mail division,
13 | 62 | Treasury Department,
May 22, 1891.

WASH., D. C., *May* 21, 1891.

Court of Claims.
Cl'f in sp'l'n claim.
F. M. Wiley *et al.*, ads.
H. B. Pierrepont.
Ship "Confederacy."

TREASURY DEP'T, *May* 22, 1891.

Respectfully referred to the
Hon. First Auditor for settlement.
Payable from appropriation,
"Payment of French spoliation claims."
Def'y act, Mar. 3, 1891.
Draft to attorney of record,
No. 100 Broadway, New York city.
L. CROUNSE, *Assistant Secretary.*

48 At a surrogate's court held in and for the county of Kings, at the surrogate's court-room, in the hall of records, in the city of Brooklyn, on the 12th day of May, in the year one thousand eight hundred and ninety-one.

Present: Hon. George B. Abbott, surrogate.

In the Matter of the Application for Letters of Administration, with the Will Annexed, of the Goods, Chattels, and Credits Left Unadministered which were of HEZEKIAH BEERS PIERREPONT, Deceased.

On reading and filing the verified petition and consent of Frances M. Wiley praying for a decree awarding letters of administration with the will annexed of the goods, chattels and credits left unadministered which were of said deceased to her in conjunction with Wm. Pierrepont White, and on reading and filing the renunciation of Julia E. Constable of her right to letters of administration with the will annexed, and on reading and filing the bond executed by said administrators with competent sureties, conditioned faithfully to execute the trusts reposed in them as such administrators, and to obey all orders of the surrogate of the county of Kings, touching the administration committed to them. And this court being satisfied that said Frances M. Wiley and Wm. Pierrepont White are in all respects competent to act as such administrators does hereby order and decree that letters of administration with the will annexed of the goods, chattels and credits which were of said deceased be awarded to the said petitioner in conjunction with William Pierrepont White.

GEO. B. ABBOTT, *Surrogate.*

282,335.

STATE OF NEW YORK, }
Surrogate's Court, County of Kings, } *ss:*

I do hereby certify that at the city of Brooklyn, in the county of Kings, on the 12th day of May, in the year of our Lord one thousand eight hundred and ninety-one, at a surrogate's court then and there held before the surrogate of said county, letters of administration with the will annexed on the goods, chattels and credits of

49 Hezekiah Beers Pierrepont, late of the city of Brooklyn, deceased, were duly granted and issued to Frances M. Wiley and Wm. Pierrepont White, and that the same are still valid and in full force; and I further certify that said administrators have given a bond in the penalty of three hundred and twenty-one thousand dollars, which has been approved by the surrogate as adequate security for the distribution of said estate.

In testimony whereof I have hereunto set my hand and affixed the seal of the surrogate's court, this 13th day of May, in the year 1891.

[SEAL.] JOSEPH W. CARROLL,
Clerk of the Surrogate's Court.

282,335.

Know all men by these presents:

That we, Frances M. Wiley, William Pierrepont White, William M. White and Garrit H. Van Wagenen are held and firmly bound unto the People of the State of New York in the sum of three hundred and twenty-one thousand dollars, lawful money of the United States of America, to be paid to the said People, for which payment well and truly to be made we bind ourselves, and our, and each of our, heirs, executors and administrators, jointly and severally, firmly by these presents.

Sealed with our seals, and dated the 11th day of May, in the year of our Lord one thousand eight hundred and ninety-one.

The condition of this obligation is such that if the above-bounden Frances M. Wiley and William P. White, about to be appointed administrators with the will annexed of all and singular, the goods, chattels and credits of Hezekiah Beers Pierrepont, deceased, shall faithfully execute the trust reposed in them as such administrators, and also shall obey all orders and decrees of the surrogate's court of the county of Kings, touching the administration of the estate committed to them, then this obligation to be void and of no effect; otherwise, to remain in full force and virtue.

FRANCES M. WILEY. [L. S.]
WM. PIERREPONT WHITE. [L. S.]
GARRIT H. VAN WAGENEN. [L. S.]
WM. M. WHITE. [L. S.]

Sealed and delivered in the presence of—
E. J. BEAGEN.

50 282,335.

STATE OF NEW YORK, } ss:
County of Kings, }

Garrit H. Van Wagenen of Rye, Westchester Co., N. Y., one of the sureties, being duly sworn, deposes and says that he owns in his own right real estate in the State of New York, consisting of real estate at Rye, N. Y., and that the same is of the value of not less than $145,000 over all incumbrances, and that he owns personal estate in the State of New York, and that its value is not less than one hundred and seventy-six thousand dollars, that it consists of stocks and bonds, and that there are no unsatisfied judgments or executions against him, and that he is worth in good property not less than three hundred and twenty-one thousand dollars over and above all debts, liabilities, and lawful claims.

GARRIT H. VAN WAGENEN.

Sworn to before me, this 12th day of May, 1891.

E. J. BERGEN,
Notary Public.

282,335.

STATE OF NEW YORK, } ss:
County of Kings, }

William M. White, of Utica, N. Y., one of the sureties, being duly sworn deposes and says that he owns in his own right real estate in the State of New York, consisting of real estate in the State of New York, and that the same is of the value of not less than $130,000 over all incumbrances, and that he owns personal estate in the State of New York, and that its value is not less that two hundred thousand dollars: that it consists of stocks and bonds, and that there are no unsatisfied judgments or executions against him, and that he is worth in good property not less than three hundred and twenty-one thousand dollars over and above all debts, liabilities and lawful claims.

WM. M. WHITE.

Sworn to before me, this 12th day of May, 1891.

E. J. BERGEN,
Notary Public.

51 282,335.

COUNTY OF KINGS, } ss:
City of Brooklyn, }

On the 12th day of May, in the year eighteen hundred and ninety-one before me came Frances M. Wiley, William P. White, Garrit H. Van Wagenen and William M. White, known to me to be the individuals described in and who executed the within bond; and they severally acknowledged to me that they executed the same.

EDWARD J. BERGEN,
Notary Public.

I approve of the sureties to the within bond.
Dated Brooklyn, May 12th, 1891.

GEO. B. ABBOTT, *Surrogate.*

STATE OF NEW YORK, }
County of Kings, Surrogate's Court. }

I, Joseph W. Carroll, clerk of the surrogate's court in and for said county of Kings, do hereby certify that I have compared the foregoing copy of the record of the bond and decree made in the matter of the administration with the will annexed of Hezekiah Beers Pierrepont, late of the city of Brooklyn, deceased, with the original records thereof now remaining in this office, and have found the same to be correct transcripts therefrom, and of the whole of such original records; and I further certify that said exemplification would be received in evidence in all the courts of the State of New York.

In testimony whereof I have hereunto set my hand and affixed

the seal of the surrogate's court, this 18th day of May, in the year of our Lord one thousand eight hundred and ninety-one.

[SEAL.] JOSEPH W. CARROLL,
Clerk of the Surrogate's Court.

STATE OF NEW YORK, }
Kings County. }

I, George B. Abbott, surrogate of Kings county, and presiding magistrate of the surrogate's court, do hereby certify that Joseph W. Carroll, whose signature is affixed to the foregoing certificate, is the clerk of the surrogate's court, and that the foregoing exemplification is attested in due form of law, and that the seal thereto affixed is the seal of said surrogate's court.

52

Witness my hand, and the seal of said surrogate's court, this 18th day of May, one thousand eight hundred and ninety-one.

[SEAL.] GEO. B. ABBOTT, *Surrogate.*

EXHIBIT 7.

At a surrogate's court held in and for the county of Kings, at the surrogate's court-room, in the hall of records, in the city of Brooklyn, on the 31st day of December, in the year one thousand eight hundred and ninety-one.

Present: Hon. George B. Abbott, surrogate.

In the Matter of the Judicial Settlement of the Account of WILLIAM PIERREPONT WHITE, as Administrator, with the Will Annexed, of Hezekiah B. Pierrepont, Deceased.

William Pierrepont White, the administrator with the will annexed of Hezekiah B. Pierrepont, deceased, having on the tenth day of December, 1891, presented a petition for a judicial settlement of his account as such administrator aforesaid, and a citation having been duly issued out of this court directed to all persons interested in the estate of said deceased, citing and requiring them to appear before this court on the 30th day of December, 1891, to attend the judicial settlement of the account of such administrator, and directing the infants therein named to show cause why a special guardian should not be appointed to appear for them on said judicial settlement;

And on the said 30th day of December, 1891, the said citation having been returned to this court with proof of due service thereof on Herbert P. Van Wagenen, an infant, and on Anna P. Van Wagenen, and Bristow, Peet & Opdyke, Esqs., having appeared for Caroline G. Burgess and Isabel Müller, and all the other parties having appeared by Ernest T. Carter, Esq., except Oliver S. White, who appeared for the estate and next of kin of William Leffingwell.

53

And the said administrator having filed his account and vouchers, and no objection being made thereto, and the surrogate having examined the said account, and found the same

correct, doth order, adjudge and decree that the said account be and the same is hereby settled and allowed.

The following is a summary statement of the said account as settled and allowed, made and recorded, pursuant to the statute in such case made and provided, that is to say:

The said administrator is charged with—		
The amount of		$160,478 29
Increase		3,292 82
Total		$163,771 11
The said administrator is credited—		
By amount of funeral expenses and expenses of administration	$476 20	
By amount paid for debts of deceased		
By expense of collecting claim from United States	9,228 29	
		9,704 49
Leaving a balance of		$154,066 62

One hundred and fifty-four thousand and sixty-six and $\frac{62}{100}$ dollars in the hands of said administrator, with which sum he is hereby charged.

And it is hereby further ordered, adjudged and decreed that said administrator do and he is hereby ordered and directed to pay out and dispose of the said balance so remaining in his hands as aforesaid as follows:

That he do retain the sum of eighteen hundred and twelve and $\frac{71}{100}$ dollars ($1,812.71) as and for his lawful commission to which he is entitled on this accounting.

That he do retain the further sum of twenty-five dollars ($25), which sum is hereby allowed to him as and for his reasonable costs, counsel fees and other expenses in this proceeding.

That he do then pay unto Oliver S. White, of New Haven, Connecticut, as administrator *de bonis non* with the will annexed of the estate of William Leffingwell, deceased, and as representing the next of kin of said William Leffingwell, one-half of the balance to wit: the sum of $76,064.45.

54 And that it be further ordered, adjudged and decreed that the balance remaining in his hands, to wit, the sum of $76,064.46, be divided according to the will of Hezekiah Beers Pierrepont, deceased, into ten portions.

And that it be further ordered, adjudged and decreed that one-tenth, to wit, the sum of $7,606.45, be paid to Wm. M. White, of Utica, Oneida Co., N. Y., and G. Hubert Van Wagenen, of Rye, Westchester Co., N. Y., as executors and trustees under the will of William Constable Pierrepont, deceased, to be divided according to his will.

And that it be further ordered, adjudged and decreed that one-tenth, to wit, the sum of $7,606.45, be paid to G. Hubert Van Wag-

enen, of Rye, Westchester Co., N. Y., as the only child of Anna Constable Van Wagenen, and entitled under the will of his grandfather, Hezekiah Beers Pierrepont.

And that it be further ordered, adjudged and decreed that two-tenths, to wit, the sum of $15,212.89, be paid to Henry E. Pierrepont, John J. Pierrepont, and William A. Pierrepont, as executors, etc., under the will of their father, Henry E. Pierrepont, deceased, to be divided according to his will.

And that it be further ordered, adjudged and decreed that one-tenth, to wit, the sum of $7,606.45, be paid to William A. Perry, of No. 24 East 38th street, New York city, as executor of Emily Constable Perry, deceased, to be divided according to her will.

And that it be further ordered, adjudged and decreed that three-fourths of one-tenth, to wit, the sum of $5,704.83, be paid on her written request to Frances M. Wiley, of 128 East 34th street, New York city, a daughter of Hezekiah Beers Pierrepont, and entitled under his will.

And that it be further ordered, adjudged and decreed that one-fourth of one-tenth, to wit, the sum of $1,901.61, be paid to William A. Perry, of No. 24 East 38th street, New York city, as trustee, etc., for Frances M. Wiley, under the will of her father, Hezekiah Beers Pierrepont, deceased.

And that it be further ordered, adjudged and decreed that the administrator retain in his hands one-tenth, to wit, the sum of $7,606.45, to be paid to the estate of a daughter, Harriet Constable Bartow, deceased, when a legal representative shall have been appointed by the court, or until further order of the court.

And that it be further ordered, adjudged and decreed that one-tenth, to wit, the sum of $7,606.45, be paid to Joseph I. Bick-
55 nell, as executor and trustee under the will of his wife, Maria Theresa Bicknell, deceased, to divide according to the terms of her will.

And that it be further ordered, adjudged and decreed that one-tenth, to wit, the sum of $7,606.45, be paid on her written request, to Julia E. Constable, of 16 East 28th street, New York city, a daughter of Hezekiah Beers Pierrepont, and entitled under his will.

And that it be further ordered, adjudged and decreed that one-tenth, to wit, the sum of $7,606.45, be paid to Virginia C. Minor, of 126 East 24th street, New York city, as administrator *de bonis non* of Ellen I. Minor, deceased, to be divided by her to those entitled.

And it is further ordered, adjudged and decreed that the receipt of the above individuals shall be a full and sufficient release of your petitioner.

And that it be further ordered, adjudged and decreed that Wm. M. White, of Utica, Oneida Co., N. Y., and G. Hubert Van Wagenen, of Rye, Westchester Co., N. Y., bondsmen for the administrators of Hezekiah Beers Pierrepont, deceased, shall on the payment of the

monies as directed above be discharged from their bond, as to the items embraced in this accounting.

(Signed) GEO. B. ABBOTT, *Surrogate.*

A copy.

JOSEPH W. CARROLL.
Clerk of the Surrogate Court.

EXHIBIT 8.

Received of Francis M. Wiley and William Pierrepont White, administrators with the will annexed of the estate of Hezekiah Beers Pierrepont, deceased, the sum of seventy-six thousand and sixty-four $\frac{45}{100}$ dollars in full of the claim due the estate of William Leffingwell, deceased from the estate of Hezekiah Beers Pierrepont, deceased, and directed by a decree of the surrogate court of Kings county, made on the 30th day of December, and duly entered in said office on the same day, to be paid to me as administrator *de bonis non* with the will annexed of said William Leffingwell, deceased, and as representing the next of kin of said William Leffingwell; and I hereby release the said administrators from all claims or demands whatsoever on account of said partnership claim.

56 In witness whereof I have hereunto set my hand and seal this 30th day of December, A. D. 1891.

OLIVER S. WHITE,
Administrator de bonis non, etc.

In presence of—
PIERREPONT BARTON.

EXHIBIT 9.

At a court held on the 28th day of October, A. D. 1880.
Present: Samuel A. York, judge.

Estate of WILLIAM LEFFINGWELL, Late of New Haven, in said District, Deceased.

It appearing to and being found by this court, that Henry White is now dead, at the request of Edward H. Leffingwell, William A. Beckley, of said New Haven, was appointed trustee to manage and execute the trust created in and by the last will and testament of the said William Leffingwell, deceased, for the benefit of Edward H. Leffingwell; and the said William A. Beckley appeared in court, and accepted said trust, and gave bond with sufficient surety in the sum of $12,000 for the faithful performance of the duties of said trust, according to law and said will, which bond is accepted, and approved by this court.

EXHIBIT 10.

Copy of the Will of Caroline Street.

Probate records of New Haven, volume 149, page 622.

Settlement of estate found in volume 147, page 529.

Will.

I, Caroline M. Street, of New Haven, Connecticut, declare the following instrument to be my last will and testament:

I give to my niece, Sally Beers Leffingwell, daughter of Lucius W. Leffingwell, and to her heirs, the sum of $5,000.

I give to my niece, Caroline S. Leffingwell, and to her heirs, the sum of $1,000.

I give to the Ladies' Home Missionary Society of the First Church in New Haven the sum of $3,000, which added to $2,000, already paid to said society, shall constitute a fund, the interest of which shall be for the use of said society.

57 I give to the trustees of the Home for Aged and Indigent Women, in New Haven, the — of $4,000, which added to the $1,000 which I have already paid for said object shall aid in constituting a fund, the interest of which shall be used in support of said institution.

I give to Miss Melinda Rankin, to be used for the Mexican mission, the sum of $5,000, to aid in creating a fund, the interest of which shall be used in promoting the cause of Protestantism in Mexico.

I give to the president and fellows of Yale college in New Haven the sum of $50,000, to create a fund for establishing professorships in the Yale School of Fine Arts. The professor of painting is to be also director of the School of Fine Arts. He must be a practical artist of acknowledged ability in the profession, a member of the New York Academy, and of the old approved school.

I have selected Mr. John F. Weir as the incumbent, and have requested that he be appointed accordingly. This is to be called the William Leffingwell professorship (with salary of $3,000 per an.)

All amount of interest arising from $50,000 above named (after deducting salary of professor of painting), shall be used to commence a foundation for a professorship of drawing and kindred duties, which the director may choose to order. This last is to be named the Street professorship.

I bequeath to my executors, hereinafter named, the sum of $5,000, to pay over the same to the person who when the same is payable shall act as treasurer of the trustees of the Hampton Normal and Agricultural Institute, located at Hampton, Virginia.

"I have not in this will made any bequests to my grandchildren, not because of any want of affection for them, but because the property which has come to them from my daughter, their mother,

will, in my judgment, be ample for their usefulness and happiness ($120,000), and a larger sum would be to them no real blessing."

I quote the above language of their grandfather, my late husband. I request that no detailed inventory be taken of my furniture, wearing apparel, and household stuff, &c., but that the appraisal of them be made in gross, as in the case of the last will of my husband.

I appoint Henry C. Kingsley my executor.

In witness whereof I have hereunto set my hand and seal, on this day, Feb. 17, 1871.

CAROLINE M. STREET. [L. S.]

58 *Codicil.*

I, Caroline M. Street, of the city of New Haven, do make this codicil to my last will and testament, which bears date February 17, 1871.

Out of any surplus which may remain after paying the legacies mentioned in my said last will and testament I give to the president and fellows of Yale college in New Haven, for the purpose of establishing a fund for the support of a professor of drawing in the school of fine arts, the sum of $25,000, and in case the income from said fund shall be more than sufficient to pay the salary of a professor of drawing it is my wish that such surplus be devoted to the purposes of art, but not to the repair or care of the building. Any remainder (after paying this last legacy) I give to the Woman's Board of Missions, to be applied to the misson purposes set forth in its act of incorporation, passed by the legislature of Massachusetts in the year 1869.

I hereunto set my hand and seal, this day, June 30th, 1871.

CAROLINE M. STREET. [L. S.]

EXHIBIT 11.

I, Edward H. Leffingwell, of New Haven, State of Connecticut, do make and publish this my last will and testament, hereby revoking all former wills and codicils by me at any time heretofore made:

First. I give my gold repeating watch, manufactured by Arthur Richards, Neuchatel, and numbered 19775, to Elizabeth Margaret Beardsley, daughter of the Reverend E. Edwards Beardsley, rector of St. Thomas' church, in New Haven; and I direct my executor (hereinafter named) to remove the chain now attached to the watch, and to replace it with a gold chain, at an expense not exceeding one hundred and fifty dollars.

Second. I give the sum of one hundred dollars to the physician or surgeon who shall, previous to my interment, make an autopsy, or post-mortem examination of my remains.

Third. I give the sum of five hundred dollars, and also my writing table or case of drawers, and the book-case thereto belonging,

meaning the articles purchased of George F. Phelps, ex-principal of the Eaton school in New Haven, to Professor Stephen G. Hubbard, M. D., of New Haven.

Fourth. I give the sum of five hundred dollars to James M. Mason, and others, committee of the proprietors of the New
59 Haven city burial ground, on Grove street, and to their successors forever, in trust for the perpetual care of my family lot, No. 26 Maple avenue, in said burial ground.

Fifth. I give to the boards of trustees and overseers of Bowdoin college, Brunswick, Maine a framed portrait in oil, being a copy of the celebrated portrait of Sir Joshua Reynolds, painted by himself.

Sixth. I give the sum of five hundred dollars to Mrs. Lottie Sumner, of Lawrence, Massachusetts, to be hers absolutely, for her sole and separate use, and free from any interference on the part of her present or of any future husband, to dispose of by will or otherwise, according to her own inclination and judgment.

Seventh. I give the sum of five hundred dollars to Emmeline Upson, formerly (about 1875 or '6) housekeeper at the Elliott house, in New Haven.

Eighth. I give the sum of five hundred dollars to Anna P. Day, daughter of the Reverend Horace Day, of New Haven.

Ninth. I give the sum — one thousand dollars to Sarah H. Gillum, of Yonkers, New York.

Tenth. I give the sum of one thousand dollars to Elmira Tarbell, now or lately residing at No. 5 Bullfinch square, Boston.

Eleventh. I give the sum of two thousand dollars to Helen M. Adams, widow of Reverend George E. Adams, D. D., formerly pastor of the Congregational church at Brunswick, Maine, and subsequently pastor of Trinity church, Orange, New Jersey.

Twelfth. I give the sum of three thousand dollars to my nephew, Reverend Christopher S. Leffingwell, son of my brother, Lucius W. Leffingwell, deceased, and formerly rector of the Episcopal church, at Gardner, Maine.

Thirteenth. I give and bequeath my entire collection of autograph letters and manuscripts and documents, and also all my biographical and other cuttings, and also my engraved and other portraits and engravings connected with autographs, to my niece, Mary Matilda Leffingwell, daughter of my brother, William C. Leffingwell, deceased, to be hers absolutely.

Fourteenth. I give and bequeath 85 shares of stock in the Michigan Central Railroad Company; also, 33 shares of stock in the Boston & Albany Railroad Company; also, 75 shares of stock in the Mechanics' Bank of New Haven, and also, 9 shares of stock of the Franklin Telegraph Company, to Ellen B. Nelson, now residing in New Haven, formerly wife of Isaac Walter Nelson, of Bridge-
60 port, Connecticut, and known as "Nellie B. Weed," being the daughter of Reverend Horatio Nelson Weed, a Methodist clergyman, formerly, and at the time of his decease (1867) residing in the town of Essex, in the State of Connecticut, the same to be hers absolutely, for her sole and separate use, and free from any

control or interference on the part of her former or any future husband, to dispose of by will or otherwise, according to her own inclination and judgment.

Fifteenth. After paying the above bequests and legacies, and my debts (if any there should be), and my funeral and monumental expenses, which should not exceed fifteen hundred dollars, I give, bequeath and devise the residue of my estate, real, personal or mixed, which I may be seized or possessed of at the time of my death, to the above-named Ellen B. Nelson, in addition to the bequest made to her in the preceding (14th section) of this my last will and testament, the same to be hers absolutely, for her sole and separate use, and free from any control or interference of her former or any future husband, to dispose of by will or otherwise, according to her own inclination and judgment.

Sixteenth. I appoint my friend, Elliott H. Morse, Esquire, of New Haven, to be sole executor of this my last will and testament.

In testimony whereof, I, the said Edward H. Leffingwell, hereunto set my hand and seal, and publish this to be my last will and testament, in the presence of the witnesses named below, this 21st day of August, in the year of our Lord, one thousand eight hundred and eighty.

EDWARD H. LEFFINGWELL. [SEAL.]

Signed, sealed, published and declared by the said Edward H. Leffingwell as and for his last will and testament, in the presence of us, who in his presence, and in the presence of each other, and at his request, have subscribed our names as witnesses hereto.

GARDNER MORSE.
CHARLES D. KINNEY.
WILLIAM W. MORSE.

Probate Court, District of New Haven, July 6th, 1888.

The within and foregoing last will and testament of Edward H. Leffingwell, late of New Haven, in said district, deceased, was received for probate; and notice of the hearing on the probate thereof having been given, said will was proved, approved, allowed and ordered on record.

A. HEATON ROBERTSON, *Judge.*

61 I, Edward H. Leffingwell, do make this codicil to my last will and testament, dated August 21st, 1880, and witnessed by Gardner Morse, Charles D. Kinney, and William W. Morse; and

Whereas, by the terms of my last will and testament, certain gifts, legacies and bequests were made to my adopted daughter by her then name of Ellen B. Nelson; and

Whereas, her name has since been changed to Marie Guillermo Leffingwell, I do hereby ratify and confirm to the said Marie Guillermo Leffingwell all the provisions made for her in my last will under the name of Ellen B. Nelson, and do declare that the said

Marie Guillermo is the person intended and meant, wherever the name of Ellen B. Nelson occurs.

In testimony whereof, I, the said Edward H. Leffingwell, hereunto set my hand and seal, and publish this to be a codicil to my last will and testament, in the presence of the witnesses named below, this 2d day of March in the year of our Lord, one thousand eight hundred and eighty-one.

EDWARD H. LEFFINGWELL. [SEAL.]

Signed, sealed, published and declared by the said Edward H. Leffingwell as and for a codicil to his last will and testament, in the presence of us, who in his presence, and in the presence of each other, and at his request, have subscribed our names as witnesses hereto.

GARDNER MORSE.
JOHN H. PLATT.
JOSEPH B. MORSE.

Probate Court, District of New Haven, *ss:* July 6th, 1888.

The within and foregoing codicil to the said last will and testament of Edward H. Leffingwell, late of New Haven, in said district, deceased, was received for probate; and notice of hearing on the probate thereof having been given, said codicil was proved, approved, allowed and ordered on record.

A. HEATON ROBERTSON, *Judge.*

A true copy of record.
Attest: EDWARD A. ANKETELL, *Clerk.*

Certified by—

EDWARD A. ANKETELL,
Clerk of the Supreme Court of Errors.

62 AUGUSTUS R. S. FOOTE & Others.

Appeal from probate.

SARAH B. LEFFINGWELL & Others.

Appeal from probate.

WILLIAM A. LEFFINGWELL & Others.

Appeal from probate.

ELLIOT H. MORSE.

Ex'r's appeal from probate.

Supreme Court of Errors, New Haven County, Third Judicial District, June Term, 1892.

Opinion of the Court.

ANDREWS, *C. J.:*

Each of these appeals was taken from an order of the probate court for the district of New Haven, made on the 9th day of March,

1892. They were argued together and depend on the same reasoning.

The order was as follows:

"DISTRICT OF NEW HAVEN, *ss:*

Probate Court, March 9th, 1892.

Estate of WILLIAM LEFFINGWELL, Late of New Haven, in said District, Deceased.

63 Upon the settlement of the administration account of said estate there remains for distribution in the hands of the administrator the sum of 74,864 dollars and 46 cents in residuary personal estate, and there being the following residuary legatees under the will of the said deceased or their representatives, namely, the children of William Leffingwell, a son of said deceased; Caroline Street, a daughter of said deceased; Maria Williams, a daughter of said deceased; the children of Lucius Leffingwell, a son of said deceased, and William A. Beckley, trustee under said will for Edward H. Leffingwell, a son of said deceased, said Beckley being the successor to Henry White, who was the last survivor of Roger S. Baldwin, Samuel J. Hitchcock, and Henry White, trustees under said will for said Edward H. Leffingwell:

64 Therefore ordered that the estate be distributed by said administrator among the said residuary legatees, according to law and said will, as follows: One-fifth thereof to the children of William Leffingwell, a son of said deceased, or their executors or administrators; one-fifth to the executors or administrators of Caroline Street, a daughter of said deceased; one-fifth thereof to the executors or administrators of Maria Williams, a daughter of said deceased; one-fifth thereof to the children of Lucius Leffingwell, a son of said deceased, or their executors or administrators; one-fifth thereof to said William A. Beckley, trustee under said will for Edward H. Leffingwell, and make return to this court."

65 In each of the first three cases there is one reason of appeal in common, namely, that the sum of $74,846.46, balance of the fund received by said Oliver S. White, administrator, was received by him in behalf of and as representing the next of kin of said William Leffingwell, and was not received by him as part of the estate of the said William Leffingwell or as assets thereof.

If this reason of appeal should be held to be untrue, then there is no error in the decree of the probate court, and the same should be affirmed; otherwise there is error. The superior court made a finding of facts and reserved all the cases as though they were parts of one case for the advice of this court.

From this finding it appears that William Leffingwell, late of New Haven, died in 1834, leaving a will, the parts of which material to the present inquiry are as follows:

66 "The rest and residue of my estate I divide into five equal portions, one of which I give and devise to the children of my deceased son William; one to my daughter Caroline; one to my daughter Maria; one to the children of my son Lucius; and one to Roger Sherman Baldwin, Samuel J. Hitchcock and Henry White, and to the survivor and survivors of them, in trust for my son Edward. And I do appoint the said Roger Sherman Baldwin, Samuel J. Hitchcock, and Henry White, Esqs., and the survivor and survivors of them, joint executors of this my last will and testament, hereby revoking all former wills."

The executors entered upon said trust and settled the estate, which was solvent, and, after paying all debts, delivered and trans-
67 ferred, on the 10th day of September, 1835, under the residuary clause, to the legatees therein named about $10,000. Henry White, the last survivor of said executors and trustees, died prior to 1880. On the 28th day of October, 1880, William A. Beckley was appointed by the court of probate in New Haven his successor as trustee. He accepted that duty and gave bonds for the faithful performance thereof, and on the 11th day of January, 1887, the court of probate appointed Oliver S. White administrator *de bonis non*, with the will annexed, on the estate of the said William Leffingwell "for the sole purpose and end of taking all proper and reasonable measures to prosecute and collect certain claims against the United States Government commonly known as the French spoliation claims, and also to render an account of his ad-
68 ministration when ordered by this court; and he was ordained, deputed, and constituted administrator *de bonis non*, with the will annexed, of all and singular the goods, chattels, credits, and estate aforesaid."

The administrator received from the United States Government, under circumstances hereafter to be stated, the sum of 76,064 dollars and 45 cents, of which he rendered his account to the court of probate, and upon the settlement of his account by the court the order was made, above recited, from which these appeals were taken.

In his lifetime William Leffingwell had been a member of the firm of Leffingwell and Pierrepont, composed of himself and
69 Hezekiah B. Pierrepont, each owning an equal share in the partnership. The firm owned a ship named "Confederacy" and its cargo. That ship was captured by the French in June, 1797, taken into Nantes, and there condemned and sold.

In 1885 Congress passed an act (23 Statutes at Large, 283) entitled An act to provide for the ascertainment of claims of American citizens for spoliations committed by the French prior to the 31st day of July, 1801, which provided as follows:

"SEC. 1. That such citizens of the United States, or their legal representatives, as had valid claims to indemnity upon the French government arising out of illegal captures, detentions, seizures, condemnations and confiscations, prior to the ratification of the convention between the United States and the French Republic concluded

on the thirtieth day of September, 1800, the ratifications
70 of which were exchanged on the 31st day of July following,
may apply by petition to the Court of Claims within two years from the passage of this act as hereinafter provided," &c., &c.

"SEC. 3. That the court shall examine and determine the validity and amount of all the claims included in the description above mentioned, together with their present ownership, and if by assignee, the date of the assignment, with the consideration paid therefor; provided, &c.

SEC. 6. That on the first Monday of December in each year the court shall report to Congress for final action the facts found by it, and its conclusions in all cases which it has disposed of and not previously reported. Such finding and report of the court shall
71 be taken to be merely advisory as to the law and facts found and shall not conclude either the claimant or Congress; and all claims not finally presented to said court within the period of two years limited by this act, shall be forever barred; and nothing in the act shall be construed as committing the United States to the payment of any such claims."

After the passage of the act Henry E. Pierrepont, the executor of Hezekiah B. Pierrepont, the last surviving partner of the said firm of Leffingwell & Pierrepont, made application to the Court of Claims for an allowance on account of the capture and sale of said ship "Confederacy," and such proceedings were had before that court upon such application that the court reported to Congress certain conclusions of fact in reference to the matters contained in said application and certain conclusions of law therein as follows:

72 "The court decides as conclusions of law that the said seizure and condemnation were illegal and the owner and insurers had valid claims of indemnity therefor upon the French government prior to the ratification of the convention between the United States and the French Republic, concluded on the 30th day of September, 1800; that said claims were relinquished to France by the Government of the United States by said treaty in part consideration of the relinquishment of certain national claims of France against the United States, and that the claimants are entitled to the following sums from the United States: Henry E. Pierrepont, executor of the will of Hezekiah B. Pierrepont, the last surviving partner (deceased) of the firm of Leffingwell & Pierrepont,
73 one hundred and sixty thousand four hundred and seventy-eight dollars and twenty-nine cents ($160,478.29)."

This decision was made on the 19th day of November, 1888, and, pursuant to the act above recited, was reported to Congress on the first Monday of December then next. On the 3rd day of March, 1891, Congress passed an act (26 Statutes at Large, 897) entitled "An act making appropriations to supply deficiencies in the appropriations for the fiscal year ending June 30th, 1891, and for prior years, and for other purposes," in which, among other things, an appropriation was made to pay the said amount so fixed by the Court of Claims. That sum was received by the claimants in said application. One-

half of it, less necessary expenses, was paid to and received by
74 said Oliver S. White, and is the sum of which he rendered his account to the court of probate as above stated.

Whether or not that sum should be held to be assets of the estate of William Leffingwell must, of course, depend upon the intention of Congress as indicated by the act of March 3rd, 1891. The claims of citizens of the United States for indemnity on account of the French spoliations had been repeatedly the subject of inquiry in Congress previous to the action of 1885. Leading lawyers in the Senate and in the House had again and again expressed the view that these claims were property belonging to the estate of those who suffered by those spoliations. Mr. Webster, in a speech made in the Senate in January, 1835. used the following language: "Before the interference of our Government with these claims they
75 constituted just demands against the government of France. They were not vague expectations of possible future indemnity for injuries received, too uncertain to be regarded as valuable or to be esteemed as property. They were just demands, and as such they were property. The courts of law took notice of them as property. They were capable of being devised, of being distributed among heirs and next of kin, and of being transferred and assigned like other legal and just debts. A claim or demand for a ship unjustly seized and confiscated is property as clearly as the ship itself. It may not be so valuable or so certain, but it is as clear a right and has been uniformly so regarded by the courts of law. * * * But France had her subjects of complaint also against the Government of the United
76 States, which she pressed with equal earnestness and confidence, and which she would neither postpone nor relinquish except on condition that the United States would postpone or relinquish their claims, and, to meet this condition and restore harmony between the two nations, the United States did agree, first, to postpone and afterwards to relinquish the claims of its own citizens. In other words, the government of the United States bought off the claims of France against itself by discharging claims of our own citizens against France." Webster's Works, vol. 4, page 159.

In 1850, February 15th, Mr. Truman Smith, then a Senator from this State, in a report made by him to the Senate, as chair-
77 man of a select committee on the "French spoliation claims," reported in substance the views of Mr. Webster. Since that time there have been no less than nineteen favorable reports made upon these claims in one or the other branch of Congress, each of them following in general the lines of argument taken by Mr. Webster. The action of Congress in 1891 was in a large degree according to these reports. It may, therefore, be pretty safely assumed that Congress intended to do that which these reports recommended—that is, to pay debts equitably due to the claimants from the United States.

It is obvious that the Court of Claims regarded the sums awarded by it as assets of the estates of the claimants. That court held, as

conclusions of law from its finding of facts, that the seizure
78 and condemnation of the ship Confederacy was illegal; that the owners had a valid claim of indemnity therefor upon the French government, and that such claim was relinquished to France by the United States in part consideration of the relinquishment by France of certain national claims which the government had against the United States—that is to say, that the United States had used a debt due to one of its citizens from the government of France to pay a claim made against itself by that government, thereby creating against itself a clear equitable claim in favor of the citizen, which would be assets of the estate of the citizen as distinctly as any other debt due to him.

The supreme judicial court of Massachusetts, in Balch *v.* Blagge, not yet reported, passing upon an award of the Court of
79 Claims such as we are now considering, says: "The Court of Claims dealt with these claims as property after the manner of the Alabama and other claims. Wilson *v.* Head, 140 U. S. Rep., 529. Congress, so far as it made appropriations for the payment of the claims, appears to have so dealt with them, except in the case of the bankruptcy of the original sufferers. The proviso concerning the next of kin may, perhaps, be taken to indicate that Congress did not intend that the awards should be paid to or for the benefit of the creditors of the original sufferers, but still Congress regarded the money to be paid as a part of the estates of the original sufferers. Congress did not concern itself with the bankruptcy of the next of kin or with their creditors. If Congress had intended that in all cases the awards should be paid to or for the ben-
80 efit of those next of kin of the original sufferers who were living at the date of the act or at the date of the award it would have been easy to say so in a few words. In the case of a partnership the money is to be paid to the administrator or executor of the estate of the surviving partner, but it must, we think, be taken to belong to the estate of the several owners according to their proportionate interests."

In the act of 1885 Congress seems to have proceeded on the theory that certain citizens of the United States had sustained losses by reason of the failure of the Government to extend to them that protection which is due from government to citizens, and that the United States owed these citizens or those who stood in their places some duty in respect to the losses so sustained. The obliga-
81 tion was one not very clearly defined, and Congress was careful to declare that nothing in the act should be construed to commit the United States to the payment of the losses. But notwithstanding this declaration further action in recognition of the undefined duty was clearly contemplated, and the sufferers from the French spoliations or their legal representatives or assigns were invited to incur expense in reliance upon that contemplated action. The claims to be presented were regarded by the act as choses in action that had passed or would pass to the legal representatives of the original sufferers, and title either by administration or by assignment was sufficient and, except in case of a surviving sufferer,

was necessary to give a petitioner standing in the Court of Claims, and must be found by that court as a part of the basis of any
82 congressional action upon the claim.

In passing the act of March 3rd, 1891, Congress evidently intended to complete the action contemplated by the act of January, 1885. It had before it the report of the Court of Claims finding that the claimants were entitled to the sum mentioned from the United States. Acting upon that report and adopting its very language, Congress, by section four of the act of March 3rd, 1891, made appropriations to pay the findings of the Court of Claims on the following claims for indemnity for spoliations by the French prior to July 31st, 1801, under the act of 1885, namely, among others, to Henry E. Pierrepont, executor of the will of Hezekiah B. Pierrepont, the last surviving partner (deceased) of the firm
83 of Leffingwell & Pierrepont, one hundred and sixty thousand four hundred and seventy-eight dollars and twenty-nine cents.

When Congress appropriated a sum of money to pay a claim established by the Court of Claims to be one which the firm of Leffingwell & Pierrepont was entitled to receive from the United States it intended something more than a mere gratuity. To pay is to discharge a debt of obligation, not to bestow a gift, and the money was appropriated to be paid not only in discharge of the findings of the Court of Claims, but to Henry E. Pierrepont in his fiduciary character as executor. All this is as plain as language can make it, and, if there was nothing more, it seems beyond question that so much of this fund as came to Oliver S. White is to be regarded as a part of the estate of William Leffingwell and to be distributed accordingly.

84 The act of March 3d, 1891, had this proviso: "Provided, that in all cases where the original sufferers were adjudicated bankrupts the award shall be made on behalf of the next of kin, instead of to assignees in bankruptcy, and the awards in the cases of individual claimants shall not be paid until the Court of Claims shall certify to the Secretary of the Treasury that the personal representatives on whose behalf the award is made represent the next of kin and the courts which granted the administrations respectively shall have certified that the legal representatives have given adequate security for the legal disbursement of the awards." In respect to this proviso the supreme court of Pennsylvania has given in the matter of Clements' estate, Atlantic Reporter, August 10th, 1892, a very clear and cogent argument. We have
85 followed the general outline and to a considerable extent the language of that opinion as expressing our own views, changing the names in that case to the names in the case before us.

It is contended that the proviso to the appropriation is indicative of an intent to make a direct gift to the next of kin of William Leffingwell, the original claimant. If this be so, either the intent was futile for want of power in Congress to divert the estate of a decedent from the statutory course of administration or the money

paid was no part of the estate of William Leffingwell, deceased. If the latter proposition can be sustained and it necessarily results from regarding the fund as a direct gift to the living next of kin and not as accruing from the payment of a debt due to their ancestor, then Oliver S. White received it as trustee for the persons described as next of kin of William Leffingwell and not in
86 virtue of his office as administrator, and the probate court had no jurisdiction to distribute the gifts.

But the proviso is as clearly evincive of an intent that the money appropriated to pay this claim should be paid to Mr. White in his capacity of administrator as is the language of the appropriation itself. While the clause "the award in case of individual claimants shall not be paid until the Court of Claims shall certify to the Secretary of the Treasury that the personal representatives on whose behalf the award is made represent the next of kin," standing alone, would indicate that the money was intended to be a gift to the persons described, and that by "personal representatives" was not meant representatives of the decedent, but the representatives of the donees of Congress, the succeeding member of the sentence
87 leaves no doubt that legal representatives of decedent's executors and administrators were intended to be the recipients, and upon the trusts declared and appointed by the law of their testator's or intestate's domicil. They were to be persons to whom administration had been granted and by whom security had been given. The courts in Connecticut, within the meaning of the proviso, which grant administration are the courts of probate in the respective districts. They have power to take security for the administration of decedents' estates according to the laws of Connecticut, and not otherwise, and have not power to take security for the execution of trusts over which the court of probate has no jurisdiction. The power and jurisdiction of these courts may be presumed to have been known to Congress, and therefore, when it required the Secretary of the Treasury to be cer-
88 tified by them "that the legal representatives have given adequate security for the legal disbursement of the awards," it must be presumed to have intended such security as they could take and certify. Requiring, then, as a condition precedent to the payment of the award that the administrator should have given security as such according to the laws of Connecticut for the legal disbursement of the same, it must have intended that the disbursement should be in accordance with the conditions of that security, namely, to the persons who were entitled to participate in the distribution of the estate upon which the administrator was acting. These are the persons who are described in the act as next of kin.

In the fourth appeal a further question is made, which can be disposed of briefly. We think that by the will of William
89 Leffingwell one trust only was created for the benefit of Edward H. Leffingwell; that the property devised to the trustees by the residuary clause of the will they took upon the same trust upon which they took the property devised to them in the

earlier part of the will. Of that trust Mr. Beckley is now the trustee. As we hold that the fund in the hands of Mr. White, the administrator, is assets of the estate of William Leffingwell, to be distributed according to the provisions of his will, we think the order of distribution of the one-fifth was properly made to Mr. Beckley, the trustee.

The superior court is advised to affirm the decree of the court of probate.

In this opinion Carpenter, Torrance, and Fenn, J's, concurred. Seymour, J., concurred in the result, but died before the opinion was written.

The foregoing is a true copy of the original opinion as filed with the reporter of the court, but the opinion is subject to alteration and addition by the judges until printed in the official reports.

JOHN HOOKER, *Reporter.*

90 Superior Court, New Haven County, December 28, 1892.

AUGUSTUS R. S. FOOTE *et al.* *vs.* WOMEN'S BOARD OF MISSIONS *et al.* } Writ of Error from the Supreme Court of the United States.

Assignment of Errors.

The plaintiffs in error in the above-entitled cause make the following assignments of error upon said writ of error:

1. Said funds received by said Oliver S. White, administrator, were received by him as representing the next of kin of said William Leffingwell and were not received by him as assets of the estate of said William Leffingwell.

2. Said balance of said funds belongs of right to these plaintiffs in error and the other next of kin of said William Leffingwell, to be shared among them *per stirpes.*

3. Said funds which formed the subject of said accounting were received by said Oliver S. White, administrator, from the administrator *de bonis non* of the estate of Hezekiah B. Pierrepont, deceased, the last surviving partner of the firm of Leffingwell & Pierrepont, of which firm said William Leffingwell was the other
91 partner, as half of the net sum received by said administrator under a certain appropriation made by the Congress of the United States on March 3, 1891, "to pay the findings of the Court of Claims on a claim for indemnity for spoliations by the French prior to July thirty-first, eighteen hundred and one, under the act entitled 'An act to provide for the ascertainment of claims of American citizens for spoliations committed by the French prior to the thirty-first day of July, eighteen hundred and one'" (26 U. S. Stat. at Large, p. 897), to wit, out of an appropriation made to pay such a claim for such spoliation on the ship Confederacy (*ibid.*, p. 903), owned by said firm, and said appropriation was one of many made in said act to sundry claimants on account of similar spolia-

tions, and the Rhode Island Trust Company (*ibid.*, p. 902) and other corporations were among said claimants, and the act making all said appropriations contained the proviso that (*ibid.*, p. 908) "the awards in the case of individual claimants shall not be paid until the Court of Claims shall certify to the Secretary of the Treasury that the personal representatives on whose behalf the award is made represents the next of kin;" and such a certificate was made by said court to the Secretary of the Treasury as respects said award for the spoliations on the ship Confederacy, and so said judgment should have ordered payment of their part of said fund, to wit, $\frac{3}{17}$, to the plaintiffs in error as next of kin of said William Leffingwell, deceased, instead of affirming said decree of probate.

4. These plaintiffs in error are entitled, as the next of kin of William Leffingwell, on March 3, 1891, when said act was passed, to their due share *per stirpes* of said balance of said account, to wit, one-third thereof, there being only three of the five children of the testator who survived him whose descendants were living on March 3, 1891.

5. By virtue of said act of Congress approved March 3, 1891, making said appropriations, the plaintiffs in error, as next of kin of William Leffingwell, have a right to part, to wit, one-
92 third, of said balance in the hands of said Oliver S. White, administrator, and said decree ought to have ordered distribution of the same to them.

6. Said judgment of said superior court denies to the plaintiffs in error a right secured to them by said act of Congress of March 3, 1891, to a share in said fund derived from the appropriation made in said act, the same being made in legal effect, as to half of said fund, to or for the next of kin of William Leffingwell living at said date, of whom the plaintiffs in error represent one line of descent.

Wherefore they pray for a reversal of said judgment.

By SIMEON E. BALDWIN,
Their Attorney.

[Endorsed:] Superior court, New Haven county. Writ of error from the Supreme Court of the United States. Augustus R. S. Foote *et al. vs.* Women's Board of Missions *et al.* Assignment of errors.

93 I, Edward A. Anketell, clerk of the superior court within and for New Haven county, State of Connecticut, hereby make return to the foregoing writ of error, and herewith transmit a true copy and transcript of the record in said cause remaining in this court, duly authenticated, together with an assignment of errors and a prayer for reversal and a citation to the adverse parties, service whereof has been duly accepted, as appears by the endorsements thereon made; and I also annex to and transmit herewith a copy of the opinion of the supreme court of errors in said cause, certified by its reporter and filed in this court, and in obedience to which and the statutes of this State said judgment of the superior court was rendered.

In testimony whereof I hereunto set my hand and affix
[SEAL.] the seal of said court this 5th day of January, A. D. 1893.

EDWARD A. ANKETELL, *Clerk.*

Endorsed on cover: Case No. 15,242. Connecticut superior court, New Haven county. Term No., 207. Augustus R. S. Foote and John S. Foote, plaintiffs in error, *vs.* The Women's Board of Missions *et al.* Filed January 9, 1893.

SUPERIOR COURT, NEW HAVEN COUNTY.

SEPTEMBER TERM, 1892.

Appeal from Probate by AUGUSTUS R. S. FOOTE, of Washington, in the District of Columbia, and JOHN S. FOOTE, of Cleveland, in the State of Ohio.

Judgment.

This cause, by appeal of Augustus R. S. Foote and John S. Foote from a decree of the court of probate for the district of New Haven in the matter of the administration account of the estate of William Leffingwell, late of New Haven, in said district, deceased, passed on the 9th day of March, 1892, claiming that said decree was erroneous because it did not award a share of the fund disposed of by said decree to them as among the next of kin of said William Leffingwell, deceased, at the date of the passage of the act of Congress of March 3, 1891, under which they claimed title, came to the April session of this court in 1892, during its September term, 1891, when the parties as described in the record and finding herein appeared, both appellants and appellees, comprising all parties interested in said cause, and were at issue and were fully heard, and the cause was duly reserved upon a finding of facts as on file for the advice of the next supreme court of errors to be holden for said county; and afterwards, said cause having been duly heard in said supreme court of errors, at its June term, 1892, said cause came by due continuance to the present term of this court, when said parties appeared, and the judgment of the supreme court of errors was communicated to this court, advising this court to affirm said decree of probate; and thereupon, after due hearing, the court, in conformity to said advice, finds the issues for the appellees.

Whereupon, in conformity with said judgment of the supreme court of errors, it is adjudged by this court (wherein the record of said cause remains, and which is the highest court of the State in which a decision in this suit could be had and the validity of said claim of said appellants under said act of March 3, 1891, determined), all parties interested in said fund and entitled to be heard in any proceeding affecting said decree under the laws of this State having been duly heard, that said decree of probate be, and the same hereby is, affirmed and made the final decree of this court in the premises, and that no costs be taxed for or against any of the parties hereto.

J. M. THAYER, *Judge.*

NEW HAVEN, CONNECTICUT, *August 12th*, 1895.

The clerk of the superior court having inadvertently omitted to include a copy of the foregoing judgment of that court in the transcript returned with the writ of error in the cause of Augustus R. S.

Foote *et al. vs.* The Women's Board of Missions *et als.*, now pending in the Supreme Court of the United States, No. 207, October term, 1895, it is hereby stipulated that the same may be printed by the clerk of that court and made and considered a part of the record in said cause as fully as if it had been included in the original transcript as certified by the clerk of the superior court.

JOHN W. ALLING AND JAMES H. WEBB,
Attorneys for Defendants in Error.
WILLIAM WARNER HOPPIN,
Attorney for Plaintiffs in Error.

[Endorsed:] Case No. 15,242. Supreme Court U. S., October term, 1895. Term No., 207. Augustus R. S. Foote *et al.*, pl'ffs in error, *vs.* The Women's Board of Missions *et al.* Stipulation and addition to record. Office Supreme Court U. S. Filed Aug. 16, 1895. James H. McKenney, clerk.

In the Supreme Court of the United States, October Term, 1893.

AUGUSTUS R. S. FOOTE *et al.*
vs.
WOMAN'S BOARD OF MISSIONS *et als.*

Stipulation.

It is stipulated that Exhibits Four and Five (4 and 5), referred to in the finding in the record of the superior and supreme courts for the State of Connecticut, shall be filed with the clerk of the Supreme Court of the United States whenever the cause comes on for argument, and that the same may be referred to and used on the trial of said cause in the Supreme Court of the United States in as full a manner as if the same were printed at full length in the record of said case in the Supreme Court of the United States, it being understood that said documents may be retained for the use of counsel for the respective parties in said cause, and that the same shall not be filed with the clerk of the Supreme Court of the United States until the filing of the briefs in said Supreme Court of the United States, and are not to be printed as a part of the transcript of the record of the superior court, and it is agreed that this stipulation may be printed with and regarded as part of the record in said cause.

SIMEON E. BALDWIN,
Attorney for Plaintiffs in Error.
JOHN W. ALLING & JAMES H. WEBB,
Attorneys for Defendants.

[Endorsed:] Case No. 15,242. Supreme Court U. S., October term, 1895. Term No., 207. Augustus R. S. Foote *et al.*, pl'ffs in error, *vs.* The Women's Board of Missions *et al.* Stipulation as to Exhibits 4 & 5, &c. Office Supreme Court U. S. Filed Aug. 16, 1895. James H. McKenney, clerk.